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## Father-Absence, Social Equality, and Social Progress

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## **Father-Absence, Social Equality, and Social Progress**

**By Helen M. Alvaré<sup>1</sup>**

### **Introduction:**

Neuralgic yet inevitable questions about parenting and gender are ripe for legal reflection today: do children benefit from the stable presence during their upbringing of both a mother and a father? Do women benefit? Does society? Today, significant numbers of children are parented largely or exclusively by one adult, quite often the mother, following divorce or out-of-wedlock childbearing. More rarely, father-absence is a function of a single woman's choice to use assisted reproductive technology. Same-sex unions also provide one-sexed parenting, but because such unions also raise questions about the effects of parents' sexual "orientation" upon children – a different and complex subject – this subject will not be treated in this paper.<sup>2</sup> Figures from the 2007 Census update showed approximately 25.8 percent of seventy-four million U.S. children under eighteen (about nineteen million), living in lone-parent households. Of these, approximately sixteen and one-half million lived with their mothers alone.<sup>3</sup> While some non-residential fathers remain involved with their children, many do not. A 2007 study reported that less than 30 percent of non-resident, divorced fathers generally have weekly contact with their children.<sup>4</sup> Never-married, non-residential fathers see their children even less often.<sup>5</sup> Father-absence is far more prevalent in poor and minority communities. Again, based upon 2007

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<sup>2</sup> Furthermore, same sex partner households contain two residential parenting adults, not one, which distinguishes these households from those primarily considered in this paper.

<sup>3</sup> U.S. Census Bureau, *America's Families and Living Arrangements 2007*, Table C 3: Living Arrangements of Children Under 18 Years and Marital Status of Parents by Age, Sex, Race plus Hispanic Origin, and Selected Characteristics of the Child for All Children, <[census.gov/population/view/socdemo/hh-fam/cps2007.html](http://census.gov/population/view/socdemo/hh-fam/cps2007.html)> (January 2, 2009).

<sup>4</sup> M.E. Scott, A Booth, V. King & D.R. Johnson, "Post-divorce father-adolescent closeness," 69 *J. of Marriage and Family* (2007): 1194.

<sup>5</sup> William Marsiglio, Paul-Amato, Randal D. Day & Michael E. Lamb, "Scholarship on Fatherhood in the 1990s and Beyond" 62 *J. of Marriage & Family* (2000): 1173, 1184.

figures, approximately 40 percent of children in households earning less than \$50,000 annually live with their mother alone. This is true of only 7 percent of children in households earning more than \$50,000.<sup>6</sup> Approximately 50 percent of Black children live in mother-only households, versus 17 percent of White children.<sup>7</sup>

The question of the preservation of joint parenting is of course neuralgic, for several reasons. First, adults in the United States are given to conceiving their choices about intimate relationships and childbearing in terms of “autonomy,” not community. The United States Supreme Court has likely given birth to this notion.<sup>8</sup> Second, the laws applicable to families have become increasingly “de-gendered” in recent decades, often under the banner of women’s equality, alongside fears about males’ propensities to violence in intimate relationships.<sup>9</sup> Against this backdrop, re-introducing gender into family (and other) laws easily stirs up suspicion. Third, because of the high numbers of children without a stably present father, and these children’s need for social assistance, a group of scholars have begun to characterize concerns over fatherhood (and the related institution of marriage) as missing the real point – increasing aid to needy children and their mothers – or as helping to institutionalize the inferior status of these children.<sup>10</sup>

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<sup>6</sup> U.S. Census Bureau, *America’s Families and Living Arrangements 2007*, Table C 3: Living Arrangements of Children Under 18 Years and Marital Status of Parents by Age, Sex, Race plus Hispanic Origin, and Selected Characteristics of the Child for All Children.

<sup>7</sup> *Ibid.*

<sup>8</sup> See e.g. *Lawrence v. Texas*, 539 U.S. 558, 562 (2003) (“Liberty presumes an autonomy of self that includes freedom of thought, belief, expression, and certain intimate conduct. The instant case involves liberty of the person both in its spatial and in its more transcendent dimensions”); *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 851 (1992) (“These matters, involving the most intimate and personal choices a person may make in a lifetime, choices central to personal dignity and autonomy, are central to the liberty protected by the Fourteenth Amendment”).

<sup>9</sup> See e.g. Martha Albertson Fineman, *Fatherhood, Feminism and Family Law*, 32 *McGeorge L. Rev.* 1031 (2001).

<sup>10</sup> See e.g. Stephen D. Sugarman, “What is a ‘Family’? Conflicting Messages from our Public Programs,” 42 *Fam. L. Q.* 231 (2008); Vivian Hamilton, “Family Structure, Children & the Law,” 24 *Wash. U. J. L. & Pol’y* 9 (2007); Martha Fineman, “Why Marriage?” 9 *Va. J. Soc. Pol’y & L.* 239 (2001).

While these concerns merit attention in any response to our parenting and gender inquiry, they cannot and should not obviate attempts to help both parents stay in their children's lives when this is possible. More than children's well-being is at stake. The welfare of mothers, fathers and society is influenced by parenting. Without fathers' assistance, women will carry unsustainable parenting loads, with obvious consequences for their education, employment, and mental and physical health. Without fathering, men will easily fail to develop the gifts and skills that arise from caring unconditionally and over the long-run, for needy others; children provide the most frequent opportunity for developing these gifts and skills. These men will populate and lead governmental and social institutions while lacking necessary awareness of the needs of parents and children. Socially, it will become more acceptable to conclude that men and women are incapable of overcoming their failings or differences even in order to care for the fruit of their own union. Finally, there is the possibility that – due to compounding as a result of intergenerational effects – fatherlessness and its associated income disadvantages will come to define and to widen the social gap between the wealthy and the poor, and between majority and minority racial groups, as Kay Hymowitz has already suggested in her book *Marriage and Caste in America*.<sup>11</sup>

Full treatment of the question about children's welfare and parents' genders would require a look at what mothers or fathers offer individually to children (which might also vary according to the child's sex), what parents' offer together or synergistically to children, and what children offer to a parent of either gender. Because such an undertaking is enormous, and because the critical question today concerns father-involvement, this paper will inquire only into the reciprocal effects of fathering (on fathers and children) and co-parenting with mothers and

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<sup>11</sup> Kay Hymowitz, *Marriage and Caste in America: Separate and Unequal Families in a Post-Marital Age* (Chicago: Ivan R. Dee Publisher, 2006).

possible legal and cultural strategies for assisting fathering. This paper is not at all intended to undervalue the crucial work of mothering, but rather seeks to address an important aspect of parenting as we find it today. It will proceed as follows: Part I will address both the warrants for and the constraints conditioning the law's entry into the subject matter of gender and parenting. It will also address preliminary questions about the use of empirical data as a basis for proposing law and policy in this area. Part II will summarize briefly (a challenge in the face of voluminous<sup>12</sup> and not uncontested evidence) the most salient empirical findings about the interaction between involved fathers, co-parenting, and children's and parents' welfare. It will conclude that there is evidence that fathers contribute measurably to their children's well-being, both alone and in tandem with mothers. Given that children also contribute to their fathers' well-being, this part will give detailed attention to findings about relationships, conditions or mechanisms for boosting father involvement; this type of evidence is practically useful for crafting family law, public policies, and cultural messages. Part III contains particular legal proposals designed to promote involved fatherhood and co-parenting, in light of the relevant data. Part IV discusses ways that a fatherhood-conscious culture might assist this same project. The Conclusion suggests several long term and fundamental "risks" if extant fathering and co-parenting patterns persist or worsen.

## **Part I. Legal Warrants and Constraints**

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<sup>12</sup> See e.g. Eirini Flouri, *Fathering and Child Outcomes* (West Sussex: John Wiley & Sons Ltd., 2005); Michael E. Lamb, ed., *The Role of the Father in Child Development*, 4<sup>th</sup> ed. ( West Sussex: John Wiley & Sons Ltd., 2003); David Blankenhorn, *Fatherless America: Confronting our Most Urgent Social Problem* (New York: Basic Books 1995); Ross D. Parke, *Fathers and Fatherhood* (Cambridge: Harvard Univ. Press, 1981).

This section will consider both the existing warrants for laws promoting fatherhood and co-parenting, as well as constraints arising from law's recent history and current concerns about the equality and dignity of women, and the flourishing of children within every family structure.

It is a classic role of U.S law, and not just family law, to attend to children's well-being. While the Supreme Court's admonition about the family as a "private realm" which the state may not enter"<sup>13</sup> appears dispositive on its face, it is well-known that this is merely one, albeit important, guideline observed by lawmakers. Lawmakers do not hesitate to act to promote children's safety, economic security, and even their capacity – via education – to take their place as the future citizens in our democracy. Closely related, of course, is the state's power to order parents to act or to refrain from acting, for purposes of securing the child's welfare. The state intervenes in situations of child abuse or neglect, for example, and decides children's custodial arrangements upon parental divorce.

Recent lively and prolific legal and sociological debates over the well-being of the "children of divorce" or children in lone-parent homes<sup>14</sup> or same-sex households,<sup>15</sup> reveal a rough consensus that it is legitimate for the state to take a position about desirable parenting environments. Perhaps this is because parenting, in the words of the late Lee Teitlebaum, so clearly illustrates the "power of one family member over others."<sup>16</sup> Unfortunately, this basic agreement has not drained the controversy out of the precise legal question before us today:

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<sup>13</sup> *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944); William Marsiglio, Paul-Amato, Randal D. Day & Michael E. Lamb, "Scholarship on Fatherhood in the 1990s and Beyond," 62 *J. of Marriage & Family* (2000): 1173, 1184.

<sup>14</sup> Cynthia Grant Bowman, "Social Science and Legal Policy: The Case of Heterosexual Cohabitation," 9 *J. L. & Fam. Stud.* 1 (2007); Martha Fineman, "Why Marriage?"

<sup>15</sup> In same-sex marriage cases, plaintiffs and defendants brief, and judges comment upon, states' interests in children's parenting circumstances. See e.g. *Goodridge v. Department of Public Health*, 440 Mass. 309, 385 (2003) ("It is difficult to imagine a State purpose more important and legitimate than ensuring, promoting, and supporting an optimal social structure within which to bear and raise children." (Cordy, J., dissenting)); *Hernandez v. Robles*, 7 N.Y. 3d 338, 360 (2006) ("Intuition and experience suggest that a child benefits from having before his or her eyes, every day, "living models of what both a man and a woman are like.")

<sup>16</sup> Lee E. Teitelbaum, "Family History and Family Law," 1985 *Wis. L. Rev.* 1135, 1145 (1985).

whether the law ought to act specifically upon findings that children benefit from parenting by fathers as well as mothers. Five legal developments within the last several decades account for this and ought to be discussed here before any particular proposals can be offered in Part III.

First, the U.S. Supreme Court has held that gender distinctions in law are a quasi-suspect category for purposes of equal protection.<sup>17</sup> Second, the Supreme Court has recognized a “right of privacy” regarding procreation, which includes a pregnant woman’s right to decide to choose an abortion. This right has been interpreted to exclude any requirement that the mother notify the father of the child about her abortion decision, even if the father is her husband.<sup>18</sup> Third, it is only in very recent decades that family law has jettisoned sex-based distinctions and embraced gender-neutrality in areas such as custody and support, not infrequently in response to demands to treat women as equally capable to men, both domestically and economically. Proposals even to “think about gender” in connection with family law and other legal arenas are likely to generate fears about resurrecting gender stereotypes which disadvantaged women. Fourth, “fatherhood projects” incite suspicion that their proponents will overlook instances of male irresponsibility, or even violence, in a drive to re-involve men in their children’s lives. Finally, because fathers are most stably present and involved when they are also husbands, efforts to boost fatherhood are easily rejected by those who conflate “marriage” with “patriarchy”<sup>19</sup> or fear that children and woman in non-marital households will be at least stigmatized and disadvantaged by any pro-marriage effort.<sup>20</sup>

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<sup>17</sup> *Reed v. Reed* 404 U.S. 71, 76 (1971).

<sup>18</sup> *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992).

<sup>19</sup> See e.g. Martha Albertson Fineman, “Fatherhood, Feminism, and Family Law,” 32 *McGeorge L. Rev.* 1031, 1046 (2001) (“Further, Galston ignores the fact that ‘stable’ marriage means that women are often dependent on men and often suffer power inequality and various degrees of domination by men, both in and outside the home.”)

<sup>20</sup> Stephen D. Sugarman, “What is a “Family?” Conflicting Messages from our Public Programs, 42 *Fam. L. Q.* 231 (2008); Vivian Hamilton, “Family Structure, Children and the Law” 24 *Wash. U. J. L & Pol’y* 9 (2007).

Several responses answer these sometimes overlapping concerns about legal efforts to boost fathering. With regard to gender-distinctions as quasi-suspect categories in the law, nothing proposed in Part III below recommends giving benefits or privileges to men versus women or vice-versa, and so this analysis will not apply. First and foremost these proposals are about facilitating fathers' assistance to their children, directly and via co-parenting, in the vein of service, obligation, and responsibility. Second, constitutional law deferring to women's choices regarding childbearing does not foreclose laws seeking to promote father involvement with child rearing. Decision making about the latter is a different matter in the eyes of the law, from decision making about the former. This is illustrated in judicial decisions involving surrogate mothers: the gestating mother's right to decide whether or not to carry the child to term is distinguished from the state's right to decide the child's legal parentage.<sup>21</sup> Custody decisions are also made by judges, based upon children's "best interests," not a mother's "privacy rights."

Third, legal and policy initiatives to secure more involved fathering do not "re-gender" law in the sense of preferring one sex over another, or in the sense of explicitly inviting or blessing particular sex-stereotyped behaviors from fathers or mothers. Such initiatives, in fact, have the same goal as the prior "de-gendering" of custody laws: to invite parenting contributions from both sexes, not to determine their precise character. Should these initiatives "work," will some "traditional" mothering and fathering behaviors emerge? Very likely, but not because any proposed law demanded them. This conclusion will not satisfy those who believe that male-female relations are too burdened by a history of patriarchy (and even violence against women) to allow any legal system in good conscience to promote co-parenting by opposite-sex couples. This paper takes the position, however, that such a stance gives far too little value to the benefits

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<sup>21</sup> See e.g. *Johnson v. Calvert*, 5 Cal. 4<sup>th</sup> 84 (1993) (gestational surrogate's privacy right to make procreative choices distinguished from a right to parent a born child).

children might derive from the involvement of their fathers. Furthermore, it has the practical effect of assuring that an impersonal state will more often play the role of “second parent” to the child. It also fails to acknowledge that norms of gender-respect within marriage have changed. In the words of Professor Amy Wax: “[T]ime has not stood still for marriage. The institution has evolved, along with law and social attitudes, to accommodate fifty years of secular shifts in gender roles.”<sup>22</sup> Finally, declaring men unfit, or under suspicion *ab initio*, is an unconscionable hindrance to the full moral development of half of the human race, and a recipe for hindering women’s realistic chances for advancement outside of the home. It also seems a recipe for building a future society where parenting is even less valued as fewer “fatherhood-conscious” men populate every kind of institution. In short, while fears of sex-stereotyping and violence are cause for vigilance, they cannot “drive” the response to children’s needs for attentive parenting, including father-involvement, and men’s need to place themselves at the service of their children.

Not only are there no firm barriers preventing the law from assisting fatherhood, but such a move would seem to draw support from an emerging theme within modern family law. Many family law scholars agree that prior, significant changes in the laws affecting children’s parenting environments moved forward precipitously, without sufficient attention to children’s needs. Among these changes are included: reduced barriers to divorce, the rise of assisted reproductive technologies, and the rise of new family forms guaranteeing or facilitating children’s temporary or permanent separation from their biological parents.<sup>23</sup> In response, family

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<sup>22</sup> Amy L. Wax, “The Family Law Doctrine of Equivalence,” 107 Mich. L. Rev. 999, 1016 (2009).

<sup>23</sup> See e.g. Lori Andrews, *The Clone Age: Adventures in the New World of Reproductive Technology* (Pennsylvania: Diane Publishing Co., 1999); Lori Andrews and Nanette Elster, “Regulating Reproductive Technologies,” 21 *J. Leg. Med.* 35 (2000); Herbie Di Fonzo, “No-Fault Marital Dissolution: The Bitter Triumph of Naked Divorce,” 31 *San Diego L. Rev.* 519 (1994); Helen M. Alvaré, “The Case for Regulating Collaborative Reproduction : A Children’s Rights Perspective,” 40 *Harv. J. on Legis.* 1 (2003); Marsha Garrison, “Law Making for Baby Making: An Interpretative Approach to the Determination of Legal Parentage,” 113 *Harv. L. Rev.* 835 (2000).

law scholarship of recent years has begun to articulate a theme that can broadly be described as “children first” or “adult responsibilities before adult rights.”<sup>24</sup> Against this background, it is important to note that the current question about parenthood and gender did *not* arise because it was perceived that children were suffering as a result of co-parenting by fathers and mothers, but rather because, as before, adults are making new choices about intimate relationships, resulting in new parenting situations for children. One frequent “situation” is father-absence. Lawmakers in the recent past, confronted with adult demands, failed even to consult let alone act upon, all of the relevant evidence about possible outcomes for children.<sup>25</sup> They also failed to call for more research in an effective or timely manner. Given that we presently have substantial (and developing) evidence that father-absence harms children (and fathers and mothers) and father-involvement benefits children (and fathers and mothers), it would be irresponsible not to take it into account in lawmaking, or to fail to facilitate more.

Closely related to the matter of lawmakers’ past failures to consult data on children’s welfare is the “burden of proof” question. Briefly put, it is this: should the burden of proof about children’s need for fathers as well as mothers be placed on those who would dispense with fathers, or on those who would try to secure fathers’ greater involvement? Several factors argue that the former group should bear the burden of proof. The first factor is raised in the paragraph immediately above: the difficulties faced by children and households today are not traced to the *presence* of two opposite-sex parents in the household, but rather to the *absence* of one-sex, or to

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<sup>24</sup> See generally, Katherine Bartlett, “Re-Expressing Parenthood,” 98 *Yale L. J.* 293 (1988); Linda McClain, *The Place of Families: Fostering Capacity, Equality and Responsibility* (Cambridge: Harvard University Press, 2006); Robin Fretwell Wilson, “Evaluating Marriage: Does Marriage Matter to the Nurturing of Children?” 42 *San Diego L. Rev.* 847 (2006); June Carbone, *From Partners to Parents: The Second Revolution in Family Law* (New York: Columbia Univ. Press, 2000). Judith S. Wallerstein, Julia M. Lewis, Sandra Blakeslee, *The Unexpected Legacy of Divorce: A 25 Year Landmark Study* (New York: Hyperion Books, 2000).

<sup>25</sup> See, e.g. Helen Alvaré, “The Turn to the Self in the Law of Marriage and Family: Same-Sex Marriage and its Predecessors,” 16 *Stan. Law & Pol’y Rev.* 135 (2005)(reviewing detailed deliberations of legislators and administrators regarding children’s welfare, in connection with rulemaking about divorce, assisted reproductive technologies, and same-sex marriage).

closely related factors such as poverty or instability in the living situation (*e.g.* changing locations of or membership in the household). Some difficulties are created by conflicts or even violence between the parents, but this is a different matter, not synonymous or co-extensive with two-sexed parenting (particularly married parenting). Second, there is the evidence from history. Through time and across many cultures, children have generally been reared in households containing both of their biological parents – even as other aspects of household composition have varied, such as extended family membership.<sup>26</sup> This evidence has a weight all its own, and points to possible intrinsic human needs and predispositions. Third and finally, is the evidence summarized Part II.B: fathers are the most likely adults, in addition to mothers, willing to assist their children, who are needy for a long period of time. There is no evidence that anyone else, or the resources of the state, can substitute over the long run for the contributions that a second parent makes to a child. Those who would allow the second parent’s role to fade away, bear the burden of demonstrating not only that the current model of two-sexed parenting is problematic, but that children will not suffer as a consequence of father-absence.

No matter where the burden of proof ought to lie, however, it is clear that many will continue to place it upon those who are uneasy about father-absence. Before Part II offers empirical data toward meeting this burden, a few words are in order about its use in the process of lawmaking. Generally speaking, empirical data is a valuable basis for making law in a pluralistic democracy, if used carefully. Margaret Brinig reminds us that careful use involves at least waiting for the literature to “develop” versus leaping to lawmaking soon after initial studies appear. Furthermore, the research needs to be scrutinized to determine, for example, whether the researchers are disinterested, and whether the databases explored can provide non-misleading

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<sup>26</sup> Edward Westermarck, *History of Human Marriage* (New York: Allerton Book Co., 1922).

answers to the question posed.<sup>27</sup> Cause and effect relations ought not to be implied easily in family law. It is difficult to know whether or not people are reacting to a particular law. In particular, the role played by emotions in family matters can make explanations for things hard to tease out,<sup>28</sup> as can the role played by a host of other personal, economic and cultural factors.

In the particular case of research about father-effects upon children, David Eggebeen further reminds us that it is difficult to tease out direct and unique effects. Fathers' effects might be "additive" ("effects....over and above what mothers do"), "redundant"(duplicative), or "unique" (fathers....are important for distinct outcomes").<sup>29</sup> Ross Parke,<sup>30</sup> William Doherty and John Beaton<sup>31</sup> point out the need for further research on the effects of complementarity of mothers' and fathers' parenting styles, as well as their co-parenting work. Both Ross Parke and Rob Palkovitz suggest that while there does exist evidence that children derive benefits from fathering *per se*,<sup>32</sup> -- even possibly unique benefits -- there remains some uncertainty regarding whether to trace such benefits to the "interactive style" that fathers happen more often to provide.<sup>33</sup> In other words, is it possible that children would benefit no matter *which* sex

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<sup>27</sup> Margaret F. Brinig, "Empirical Work in Family Law," 2002 *U. Ill. L. Rev.* 1083 (2002).

<sup>28</sup> *Ibid.*

<sup>29</sup> David Eggebeen, "Do Fathers Matter Uniquely for Adolescent Well-Being?" *Institute for American Values Center for Marriage and Families, Res. Brief* 14 (Oct. 2008): 2.

<sup>30</sup> Ross D. Parke, "Gender Differences and Similarities in Parental Behavior," in *Gender and Parenthood*, ed. Kathleen Kovner Kline and W. Bradford Wilcox (10/TBD, 2010)([W]e need more work that involves a family systems approach if we are to understand not simply the individual contributions of mothers and fathers but the complementary of maternal and paternal styles as well.)

<sup>31</sup> William J. Doherty and John Beaton, Mothers and Fathers Parenting Together, in A.L. Vangelisti, ed., *Handbook of Family Communication* (Mahwah, New Jersey: Lawrence Erlbaum Assocs., 2004), 269.

<sup>32</sup> Ross D. Parke, Gender Differences and Similarities in Parental Behavior, in *Gender and Parenthood*, ed. Kathleen Kovner Kline and W. Bradford Wilcox , 9 ("A]lthough there is overlap between the effects of mothers and fathers on their children's academic, emotional and social development, evidence is emerging that fathers make a unique contribution to their children's development."); Rob Palkovitz, "Gendered Parenting's Developmental Implications for Children: Theory and Research in Applied Perspective," in *Gender and Parenthood*, ed. Kathleen Kovner Kline and W. Bradford Wilcox (10-11/TBD, 2010).

<sup>33</sup> Rob Palkovitz, "Gendered Parenting's Developmental Implications for Children," TBD/ 11 ( Discussing an earlier analysis of parental gender differences containing evidence that "parenting style may be more central in influencing child outcomes than parental gender roles, though they are related to one another."); Ross D. Parke, "Gender Differences and Similarities," 19 ("Instead, it may be helpful to recast the issue to ask whether exposure to male and

delivered interactions in the form of lively physical play or teasing, even though these interactions more typically characterize fathers' behavior in North American and similar western cultures?<sup>34</sup>

On the other hand, at the practical level, U.S. lawmakers have grown accustomed to reviewing empirical evidence as a basis for making law, and can benefit from the instructions and cautions offered by experts.<sup>35</sup> Scholars on both sides of various family debates offer it. Courts and legislatures evaluate it. The federal government solicits it, including particular research about fathering.<sup>36</sup> There is a 40-year history, at the federal level in particular, of paying attention to expert scientific sources on fathering.<sup>37</sup>

Finally, a cautionary reason to rely on empirical data: without it, lawmakers tend to default to problematic bases like adults' preferences. In the words of several child researchers, "without the active engagement of scientists, ideology can steal [the] role" of "applied decision

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female parents is the key, or whether it is exposure to the interactive style typically associated with either mothers or fathers that matters.")

<sup>34</sup> Ross D. Parke, *Gender Differences and Similarities*, 20-22.

<sup>35</sup> See, e.g. Margaret F. Brinig, "Empirical Work in Family Law," 2002 *U. Ill. L. Rev.* 1083; Margaret F. Brinig, Steven L. Nock, "The One-Size-Fits-All Family," 49 *Santa Clara L. Rev.* 137 (2009); Marsha Garrison, "Reviving Marriage: Could We? Should We?" 10 *J. L. & Fam. Stud.* 279 (2008). Margaret Brinig, "Does Parental Autonomy Require Equal Custody at Divorce?" 65 *La. L. Rev.* 1345 (2005).

<sup>36</sup> See the summary of the Department of Health and Human Services' research initiatives on fatherhood at [www.fatherhood.hhs.gov/Research/index.shtml](http://www.fatherhood.hhs.gov/Research/index.shtml).

<sup>37</sup> See e.g. Office of Policy Planning & Research, U.S. Dept. of Labor, "The Negro Family: The Case for National Action" (commonly called the "Moynihan Report") 1965; President Jimmy Carter's White House Conference on Families; President Ronald Reagan's Executive Order 12,606, 52 *Fed. Reg.* 34188 (Sept. 9, 1987) (requiring all federal policies and regulations significantly impacting the family to assess factors such as the effect upon the "stability of the family...particularly the marital commitment"); Bill Harrington (Commissioner), Minority Report and Policy Recommendations of the United States Commission on Child and Family Welfare, <<http://members.peak.org/~jedwards/harminor.htm>>, 1996 (urging the President and Congress to a "national commitment to the re-inclusion and re-involvement of fathers in family life") (May 6, 2009).

<sup>37</sup> Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 42 U.S.C. § 601 *et seq.* (2000 & Supp. 2003); and the Deficit Reduction Act of 2005, [42 U.S.C.A. § 603\(a\)\(2\)](#) (West Supp. 2007) ("Healthy marriage promotion and responsible fatherhood grants"); U.S. Dep't of Health & Human Services, Office of Family Assistance, OFA Healthy Marriage and Promoting Responsible Fatherhood Initiatives, <<http://www.acf.hhs.gov/programs/ofa/hmabstracts/summary.htm>> (December 20, 2008).

making of policy and practice”<sup>38</sup> An excellent example of this phenomena occurred very recently in the United Kingdom’s legislative debate over removing the requirement (in the Human Fertilisation and Embryology Authority’s, Code of Practice) that assisted conception shall not be provided to a woman unless “account has been take of the welfare of the child....(including the need of that child for a father).”<sup>39</sup> A review of the debate in both the House of Lords and the House of Commons, indicates that alongside cursory references to claims that parental “quality” matters more than gender, the dispositive arguments relied on adult interests. The Parliament concluded that recommending father-involvement for technologically conceived children might “imply that unjustified discrimination against ‘unconventional families’ is acceptable,” or send single women to “make informal arrangements outside the protection of formal healthcare.”<sup>40</sup> Similar reasoning is observed in the Pennsylvania Supreme Court’s 2007 decision to refuse to require a sperm donor father to pay child support, despite imposing that obligation upon every father of naturally conceived children, on the ground that: “An increasing number of would-be mothers who find themselves either unable or unwilling to conceive and raise children in the context of marriage are turning to donor arrangements to enable them to enjoy the privilege of raising a child or children.” To require sperm donor fathers to pay child support would impose upon women the “unpleasant choice” [of deciding between an anonymous donor and a donor she “knows and admires”] thus “legislat[ing] in precisely the way Mother notes this Court has no business doing.”<sup>41</sup>

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<sup>38</sup> Lucy Davidson, Mark L. Rosenberg & Kristen A. Moore, “Well-Being and the Future: Using Science Based Knowledge to Inform Practice and Policy,” in *Well-Being: Positive Development Across the Life Course*, eds. Marc Bornstein, et al, (Mahwah, New Jersey: Lawrence Erlbaum Assocs., 2003) 525,527.

<sup>39</sup> Elizabeth Shepherd, “Library Note: Human Fertilisation and Embryology Bill,” [HL Bill 6: 2007-08], House of Lords Library Note, 14 November 2007 (LLN 2007/007).

<sup>40</sup> Edward White, “Human Fertilisation and Embryology Bill,” [HL Bill 70: 2007-08] House of Commons Library Research paper 08/42, 2 May 2008, 55-56.

<sup>41</sup> *Ferguson v. McKiernan*, 596 Pa. 78, 93, 97-98 (2007).

## Part II. The Empirical Evidence

### A. Fathers' contributions to children

Evidence of beneficial “father-effects” upon children is plentiful, at the same time it is incomplete. While a complete summary is impossible in a paper of this size, it is necessary to highlight experts’ broad conclusions<sup>42</sup> insofar as these contribute to thinking about what law can do – both in “family law” proper and in other possibly influential areas, such as laws affecting income, education, and the workplace. Because law is a practical art, it will also be helpful to highlight evidence about mechanisms for helping to secure father-involvement. This part will also highlight evidence about the benefits of father-involvement for mothers, and for fathers themselves. It will conclude with brief reflections about the implications for the larger society of the presence or absence of father-involvement.

While it appears that a mother or a father could “provid[e] the basic care giving that infants and children need for survival,”<sup>43</sup> there is also a “solid body of evidence for the benefits of “positive father involvement.”<sup>44</sup> Eirini Flouri would refine this to state that there is evidence that “certain aspects of father involvement in certain groups of fathers was (sic) associated with certain outcomes in certain groups of children.”<sup>45</sup>

There are things fathers do that mothers also do, which assist their children’s development, when the children are small,<sup>46</sup> and also during their adolescence.<sup>47</sup> A 2000 meta-

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<sup>42</sup> See e.g. Michael E. Lamb, *The Role of the Father in Child Development* (2004); William Marsiglio, Paul Amato, Randal D. Day & Michael E. Lamb, “Scholarship on Fatherhood in the 1990s and Beyond,” 62 *J. of Marriage and the Family* (2000): 1173; Ross D. Parke, “Fathers and Families,” in *The Handbook of Parenting* (vol. 3), ed. Mark H. Bornstein, (Mahwah, New Jersey: Lawrence Erlbaum and Associates, 2002), 27-74.

<sup>43</sup> Ross D. Parke, “Gender Differences and Similarities in Parental Behavior,” 2TBD.

<sup>44</sup> Michael E. Lamb, *The Role of the Father in Child Development*, 2. See also Eirini Flouri, *Fathering & Child Outcomes*, 179-188.

<sup>45</sup> Eirini Flouri, *Fathering & Child Outcomes*, 187-88.

<sup>46</sup> Ross D. Parke, “Gender Differences and Similarities in Parental Behavior,” 2 TBD.

analysis indicated that of the relatively few (8) extant studies about the effects of father involvement which controlled for the quality of the mother-child relationship, and used data from independent sources, 5 showed “significant associations between positive father involvement and child outcomes.”<sup>48</sup> Furthermore, of the few studies measuring “causation” versus correlation, they tend to support the conclusion that fathers’ behavior affects outcomes such as children’s social integration, marital success and ability to secure a supportive social network.<sup>49</sup> David Eggebeen concludes that while “additive” contributions of fathers might be the most common, it is possible to claim some “unique” effects of good fathering, especially, in the area of their human capital – *e.g.* their education -- which affects outcomes for both sons and daughters.<sup>50</sup> Rob Palkovitz also recognizes that some research points “toward the unique contributions of fathers” to children’s welfare.<sup>51</sup>

Another vantage point from which researchers have considered possible father effects is father-absence. Some literature has associated this with outcomes such as an earlier onset of sexual activity and childbirth in girls,<sup>52</sup> and a greater likelihood of police involvement in adolescent sons.<sup>53</sup> A very recent qualitative study of male perpetrators of intimate violence associated father absence (and possibly the absence of other positive male role models) with this

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<sup>47</sup> David Eggebeen, “Do Fathers uniquely matter for adolescent well-being?” 1, *citing* Cheryl Buehler, Mark J. Benson and Jean M. Gerard, “Interparental Hostility and Early Adolescent Problem Behavior: The Mediating Role of Specific Aspects of Parenting,” 16 *J. of Res. on Adolescence* (2006): 265.

<sup>48</sup> William Marsiglio, et al, “Scholarship on Fatherhood in the 1990s and Beyond,” 1183.

<sup>49</sup> *Id.* at 1184.

<sup>50</sup> David Eggebeen, “Do Fathers Uniquely Matter for Adolescent Well-Being?” 19-20.

<sup>51</sup> Rob Palkovitz, “Gendered Parenting’s Developmental Implications for Children: Theory in Applied Perspective,” 14.

<sup>52</sup> See David F. Bjorklund & Ashley C. King, “Human Parenting from an Evolutionary Perspective,” in *Gender and Parenthood*, ed. Kathleen Kovner Kline and W. Bradford Wilcox (22/TBD, 2010), *citing* B.J. Ellis, J.E. Bates, K.A. Dodge, D.M. Fergusso, L.J. Horwood, G.S. Pettit and L. Woodward, “Does Father Absence Place Daughters at Special Risk for Early Sexual Activity and Teenage Pregnancy?” 74 *Child Development* (2003): 801; R.J. Quinlan, “Father Absence, Parental Care and Female Reproductive Development,” 24 *Evolution and Human Behavior* (2003): 376; M. Wierson, P. Long, and R. Forehand, “Toward a New Understanding of Early Menarche: The Role of Environmental Stress in Pubertal Timing,” 28 *Adolescence* (1994): 913; Judy Dunn, Annotation: “Children’s Relationships with their Nonresident Fathers,” 45 *J. of Child Psychology and Psychiatry* (2004): 659.

<sup>53</sup> Eirini Flouri, *Fathering and Child Outcomes*, 104-07.

behavior.<sup>54</sup> This complements research associating more father involvement – in particular playfulness, patience and understanding -- with “less aggressive behavior with peers.”<sup>55</sup> One final note on father absence: an indirect effect of father absence is the greater likelihood that an unrelated male will live in the household of a mother and child; this correlates robustly with a significantly increased risk for childhood violence and death.<sup>56</sup> David Bjorklund and Ashley King point out in fact that the “single best predictor of child abuse is the presence of a stepparent in the home.”<sup>57</sup>

The effects on children of mothers’ and fathers’ interactions – sometimes characterized as “complementarity” – and their support for one another in the parenting enterprise,<sup>58</sup> are under-researched in the opinion of several leading experts.<sup>59</sup> There are several components to this question. First there is the “numbers game,” the two versus one aspect. Rob Palkovitz, from a family systems perspective, and Charles Snowdon, from his observations of cooperative parenting among primates, have explained why it is theoretically and practically likely that the presence of two parents would offer advantages to children. Palkovitz points to the higher probability of being able to model behaviors effective for each gender (versus “reworking”, *e.g.* seeking to reflect on and to copy what was not experienced) and “view different personalities,

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<sup>54</sup> Elizabeth Reed, et al., “Social and Environmental Contexts of Adolescent and Young Adult Male Perpetrators of Intimate Partner Violence: A Qualitative Study,” 2 *Amer. J of Men’s Health* (2008): 260, 263, 266 (Nineteen qualitative interviews. One participant reported to the researchers: “my mom bein’ a single parent, raisin’ two boys, and not knowin’ anything about ‘em ‘cause she’s a female, you know?”)

<sup>55</sup> Ross D. Parke, “Gender Differences and Similarities in Parental Behavior,” TBD/9.

<sup>56</sup> Patricia Schnitzer & Bernard G. Ewigman, “Child Deaths Resulting From Inflicted Injuries: Household Risk Factors and Perpetrator Characteristics,” 116 *Pediatrics* (Nov. 2005): 687 (Death rate for children in households with parent and an unrelated adult was of 50 times the death rate of households with two biological parents present. The unrelated male perpetrated the killing in 83.9% of the deaths. No difference in death rates was found between single parent households with no unrelated adult present, and two parent biological parent households.)

<sup>57</sup> David F. Bjorklund and Ashley C. King, “Human Parenting from an Evolutionary Perspective,” TBD 24, *citing* M. Daly and M. Wilson, *Homicide* (Hawthorne, NY: Aldine, 1988) and M. Daly and M. Wilson, “Violence against Stepchildren,” 5 *Current Directions in Psychological Science* (1996): 77.

<sup>58</sup> See *e.g.* William J. Doherty and John M. Beaton, Mothers and Fathers Parenting Together in *Handbook of Family Communication*, ed. ANITAL. Vangelisti (Mahwah, New Jersey: Lawrence Erlbaum and Associates, 2004), 269.

<sup>59</sup> Ross D. Parke, “Gender Differences and Similarities in Parental Behavior,” 10/TBD.

strengths and weaknesses.” With two parents, there is also the advantage of more income, and more monitoring and role specialization, leading possibly to more child-centered time.<sup>60</sup>

Snowdon also points to outcomes including division of labor, vigilance against predators, and the ability of multiple caregivers to “buffer the extremes of variation in infant care” to produce well-cared for infants even if an individual mother’s or father’s skills were not excellent.<sup>61</sup>

Second, there is the question of the possible effects of the interactions between the various styles or contents of mothers’ and fathers’ parenting – for example’s father’s greater permissiveness mother’s greater authoritativeness,<sup>62</sup> an area requiring much more study. Third, there are the effects on children via fathers’ relationships with the mother. Significant research today indicates that fathers’ provision of material and emotional support to mothers has a positive influence on child outcomes. Conversely, when mothers have less support from fathers, abuse and infanticide by mothers is more common.<sup>63</sup> As summarized by Michael Lamb, parental “harmony is a consistent correlate of child adjustment, whereas mortal conflict is a consistent and reliable correlate of child maladjustment.”<sup>64</sup> This is true in the case of residential and nonresidential fathers. Good relations between nonresidential fathers and co-residential mothers, is “consistently found to be positively associated with the pattern of contact between child and father.”<sup>65</sup> These results are not difficult to understand given, in Brad Wilcox’s phrase, the

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<sup>60</sup> Rob Palkovitz, “Gendered Parenting’s Developmental Implications for Children: Theory in Applied Perspective,” 5, 19.

<sup>61</sup> Charles T. Snowdon, “Family Life and Infant Care: Lessons from Cooperatively Breeding Primates” in *Gender and Parenthood*, TBD/19.

<sup>62</sup> Dan Milevsky, et al., “Maternal and Parenting Styles in Adolescents: Associations with Self-Esteem, Depression and Life-Satisfaction,” 16 *J Child Fam. Stud.* (2007): 39, 45.

<sup>63</sup> Bjorklund and King, “Human Parenting from an Evolutionary Perspective,” TBD,14.

<sup>64</sup> Michael Lamb, *The Role of the Father in Child-Development*, 10-11.

<sup>65</sup> Judy Dunn, “Annotation: Children’s Relations with Their Nonresidential Fathers,” 45 *J. of Child Psychology and Psychiatry* (2004): 663-64. *See also* W. Doherty, E.F. Kouenski & M.F. Erickson, “Responsible fathering: An overview and conceptual framework,” 60 *J. of Marriage and the Family* (1998): 277.

“heavy load associated with contemporary parenting”<sup>66</sup> alongside a workplace culture in the U.S. still resistant to adopting the flexibility warranted by parents’ and children’s needs, and mothers’ preferences for more time with their children.<sup>67</sup>

As mentioned above, some researchers have speculated that it may be fathers’ and mothers’ typical interactive styles, versus fatherhood and motherhood, *per se*, which alone and together, account for good child outcomes.<sup>68</sup> The former possibility is undercut by data indicating that traditionally gendered parenting produce outcomes which are the “most favorable to the socio-affective development of young children,”<sup>69</sup> and by evidence that role-reversed parenting appears to yield greater unhappiness and worse outcomes.<sup>70</sup> But for our purposes, which include thinking about laws which apply to vast numbers of citizens, this debate is not determinative. Rather, to the extent there are variations in parental styles between mothers and fathers -- in addition to the significant overlap that has been observed – and to the extent that our legal proposals are in the nature of “invitations” to men, it is only necessary to know that fathers will more often be the interested adult on the scene, and more likely to deliver male-typical parental styles.

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<sup>66</sup> W. Bradford Wilcox, Jefferey Dew, “No One Best Way: Work –Family Strategies, The Gendered Division of Parenting, & the Contemporary Marriages of Mothers and Fathers,” in *Gender and Parenthood*, TBD/25, *citing*, Annette Lareau, *Unequal Childhoods,: Class, Race, and Family Life* (Berkeley: University of California Press, Ltd., 2003).

<sup>67</sup> *See generally*, Joan Williams, *Unbending Gender: Why Family and Work Conflict and What to do About it* (New York: Oxford University Press, 2000); W. Bradford Wilcox & Jeffrey Dew, *No One Best Way: Work-Family Strategies, the Gendered Division of Parenting, & the Contemporary Marriages of Mothers and Fathers*

<sup>68</sup> *See supra* nn. 28-29/TBD.

<sup>69</sup> Daniel Paquette, “Theorizing the Father-Child Relationship: Mechanisms and Developmental Outcomes,” 47 *Human Development* (2004), 193 ; *See also* Rob Palkovitz, “Gendered Parenting’s Developmental Implications for Children: Theory in Applied Perspective,” 14 (reporting that daughters and sons from “sex-typed” homes demonstrate higher levels of competence than children from a selection of other types of homes).

<sup>70</sup> *See* Wilcox and Dew, “No One Best Way,” 19 (husbands married to women who work more than they do are more divorce-prone).

Another important avenue of research concerns the mechanisms or conditions facilitating father involvement. It is regularly concluded that a wide variety of interacting<sup>71</sup> factors influence men's fathering including, *inter alia*, individualized factors such the circumstances of his birth-family<sup>72</sup> and his community, his socio-economic status, his skills and sense of competence<sup>73</sup> his sense of fulfillment as a breadwinner,<sup>74</sup> and his attitude toward the parental role. External factors might include everything from the characteristics of his children, to social assumptions about fatherhood and masculinity,<sup>75</sup> to his relations with the mother, and the various legal and other institutional (particularly employment) practices and policies affecting fathering. Of these factors, those presenting more obvious opportunities for legal and cultural influence include: the accumulation of personal capital – including his educational and economic capabilities – and laws and cultural assumptions about fathering and co-parenting, the stability of father-mother relations, and employment. Looking first at the relationship with the mother, it certainly appears that a pro-healthy-marriage strategy substantially overlaps with a fatherhood involvement strategy. Fathers married to the mothers of their children are the most involved.<sup>76</sup> This has a variety of associated factors. Married fathers are likely more certain about paternity of the child – a factor with both ancient evolutionary significance, and with parallels elsewhere in the mammalian world.<sup>77</sup> Another factor that appears to have evolutionary significance: fathers may be motivated to invest in children, in part, as a portion of their mating strategy with the

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<sup>71</sup> Michael Lamb, "The Role of the Father: An Introduction," in *The Role of the Father in Child Development*, 11.

<sup>72</sup> This includes, of course, his experience of his own father. *Id.* at 12.

<sup>73</sup> Daniel Nettle, "Why do some dads get more involved than others? Evidence from a large British cohort," 29 *Evo. and Human Beh.* (2008): 416, 421, 422.

<sup>74</sup> Michael Lamb, "The Role of the Father: An Introduction," *The Role of the Father in Child Development*, 11.

<sup>75</sup> Michael Lamb, "The Role of the Father: An Introduction," 12.

<sup>76</sup> Marcia J. Carlson, "Family Structure, Father Involvement, and Adolescent Outcomes," 68 *J. of Marriage and Family* (2006): 137-154.

<sup>77</sup> See Bjorklund & King, TBD 7,19; Snowden, TBD 6.

mother.<sup>78</sup> In marriage, the relationship with the mother has more certainty about it. A third possible factor: marriage is more stable as compared with other relationships such as cohabitation;<sup>79</sup> and stability helps account for a variety of associations between parenting and child well-being.<sup>80</sup> Of course this stability, too, has many elements, including who self-selects into marriage, and the fact that law, society and extended families offer more support to marriage than to non-marital intimate relationships.

Nonresident fathers are particularly susceptible to a phenomenon researchers have called “gatekeeping (mothers’ tendency to exclude or limit father-involvement).<sup>81</sup> Fathers report it to surveyors<sup>82</sup> and researchers.<sup>83</sup> Needless to say, there are two sides to every story, and it is possible that a father’s prior violence or apathy or risky behavior accounts for a mother’s resistance, which would then not constitute “gatekeeping” in the classic sense, but rather an attempt to “negotiate” better father behavior.<sup>84</sup> Frequent parental sex and style differences (present in every kind of household) probably account for a portion of mothers’ and

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<sup>78</sup> Bjorklund & King, TBD 18.

<sup>79</sup> Margaret Brinig, “Legal Status and Effects on Children,” 5 *U. St. Thos. L. J.* 548, 556-57 (2008).

<sup>80</sup> Gary D. Sandefur and Jane Mosely, “Family Structure, Stability and the Well-Being of Children, in *Indicators of Children’s Well-Being*, ed. Robert M. Hauser, Brett V. Brown and William R. Prosser (New York: Russell Sage Foundation, 1997): 330-32

<sup>81</sup> Michael Lamb, *The Role of the Father in Child Development*, 13-14; *See also*, Angie M. Schock & Steven M Gavazzi, “Fathers Court-Involved Daughters: Fathers’ Gender-Specific Concerns About Their Paternal Role,” 3 *Fathering* (2005): 121, 138. (Researchers investigating fathers’ involvement with court-involved daughters described the mothers’ “initial reluctance to relay the telephone messages to the fathers.” Yet the fathers “were receptive to the idea of participating in the study.” *See also* Graeme B. Wilson, “The Non-Resident Parental Role for Separated Fathers: A Review,” 20 *Int’l J. of Law and Policy* (2006): 286, 302.

<sup>82</sup> National Fatherhood Initiative, *Fathering Attitudes Survey*, 16 (Among unmarried fathers, the mother’s resistance or lack of encouragement ranked more highly than any other factor in a list of “obstacles to good fathering.”).

<sup>83</sup> *See e.g.* Edward Kruk, “Psychological and Structural Factors Contributing to the Disengagement of Noncustodial Fathers after Divorce,” 29 *Fam. & Conciliation Cts. Rev.* 81 (1993) (90% of 40 fathers cited “access difficulties” in seeing their children.)

<sup>84</sup> *See* Yoshie Sano, Leslie N. Richards and Anisa M. Zvonkovic, “Are Mothers Really “Gatekeepers” of Children? Rural Mothers’ Perceptions of Nonresident Fathers’ Involvement in Low-Income Families,” 29 *J. of Fam. Issues* (2008): 1701.

nonresidential fathers' reports about "gatekeeping." William Doherty and Shonda Craft's research indicates ways to overcome it when healthy for the child and the parents.<sup>85</sup>

Other mechanisms for securing father-involvement have been suggested by two studies involving parents and troubled or court-involved children. Researchers in both studies professed themselves surprised at fathers' willingness to become involved following direct invitations, and concluded that "articulating that the focus of the present study addressed the fathers' perspective was likely to have been alluring to many men, particularly to those fathers of daughters who may feel that they are rarely asked for their input concerning family issues."<sup>86</sup> Another technique that successfully involved fathers: scheduling child-related events at times convenient for fathers.<sup>87</sup>

A final and important variable affecting father involvement is the workplace. Participants in the National Fatherhood Initiative's Fathering Attitudes Survey identified the workplace as among "most important reasons ...to explain low levels of paternal involvement."<sup>88</sup> Adolescents have been shown to suffer if fathers experience long hours and a high volume work load.<sup>89</sup>

## **B. Time Plus Inclination Equals "Father."**

Thus far, we have been identifying fathers' contributions to children's welfare, whether additive, redundant or unique, and some constraints to father involvement. We have noted

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<sup>85</sup> Doherty and Craft, 3-6, 9-18.

<sup>86</sup> Daniel M. Bagner and Sheila M. Eyberg, "Father Involvement in Parent Training: When Does It Matter?" 32 *J. of Clinical Child and Adolescent Psychology* (2003): 599, 603 (researcher called "unanticipated" the "high rate (78%) of involvement of fathers in their child's treatment." They concluded that their results "suggest that when encouraged and given the opportunity to be involved in treatment, fathers are likely to attend treatment sessions at a rate similar to that of their child's mother.") See also Angie M. Schock & Steven M Gavazzi, "Fathers Court-Involved Daughters: Fathers' Gender-Specific Concerns About Their Paternal Role," 3 *Fathering* 121, 139 (2005).

<sup>87</sup> *Ibid.*

<sup>88</sup> National Fatherhood Initiative, *Fathering Attitudes Survey: Executive Summary* 2006, 1.

<sup>89</sup> Ann Crouter, *et al.*, "Implications of Overwork and Overload for the Quality of Men's Family Relations," 63 *J. of Marriage and the Family* (2001): 404.

several times the outstanding questions about whether or not it matters if fathers, *per se*, or another person, deliver such contributions. That question may be salient in the context of a particular household, but is not sufficient to abandon the project of boosting fatherhood. This is not only true because the law has to rest content to make rules for typical situations. It is also true because a host of other factors associated with healthy child development – the presence of multiple adults (for volume of work, buffering, income, mutual adult support, role-modeling),<sup>90</sup> with inclinations to invest in a particular child (because of the biological relationship), over a relatively long period of time (given humans’ relatively long maturing period<sup>91</sup>), and responsively,<sup>92</sup> who can help the child “role model” versus “rework” their gender identity<sup>93</sup> – all together, spells “father” in addition to “mother.” The father, particularly if he is married to the mother, is most likely to be the second adult providing children with their needs in these stated categories. The idea forwarded on occasion, that another group of persons (including childcare providers, friends of same-sex couples, and extended family members),<sup>94</sup> or perhaps the state,<sup>95</sup> might be able to provide all that children need, on a consistent, reliable basis appears simply unrealistic, perhaps even preposterous. A closer look at papers proposing these alternatives reveals little hard evidence for the thesis that there are good father-substitutes. One paper, which tries to prove that children have a network of caretakers who might deserve parental-type rights,

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<sup>90</sup> See *supra* notes 57-60 .

<sup>91</sup> Bjorklund & King, 4-5..

<sup>92</sup> See generally, Kathleen Kovner Kline & Brian Stafford, “Essential Elements of the Caretaking Crucible,” in *Gender and Parenthood, TBD*

<sup>93</sup> See Palkovitz, 26 (“I am confident that the literature clearly supports the perspective that children from families that have well functioning males and females consistently engaged in role sharing parenting roles are advantaged because they can see how men and women perform a similar task similarly and differently.”) See also Schock and Gavazzi, “Fathers Court-Involved Daughters: Fathers’ Gender-Specific Concerns About Their Paternal Role,” 124 (suggesting that parent’s differential gender-related socialization of their offspring reaches a high during adolescence.)

<sup>94</sup> See, e.g. Melissa Murray, “The Networked Family: Reframing the Legal Understanding of Caregiving and Caregivers,” 94 *Va. L. Rev.* 385 (2008).

<sup>95</sup> Martha Fineman, “Why Marriage?” 9 *Va. J. Soc. Pol’y & the Law* 239 (2001); Vivian Hamilton, Family Structure, Children and the Law. 24 *Wash U. Law & Pol’y* 9 (2007).

relies particularly on the number of hours children spend in childcare.<sup>96</sup> But no matter how many hours children spend with (rotating) members of childcare facilities – there is no evidence that childcare providers do or intend to make parental-type investments in children. Sometimes family members acting as caretakers, or even friends, intend such a relationship, but there is no research measuring their behavior in the context of what children’s development requires, nor even summing up the total numbers of persons and hours acting in this capacity. As for the state, Marsha Garrison’s summary of recent Scandinavian evidence,<sup>97</sup> and Margaret Brinig and Stephen Nock’s recent analysis of family forms,<sup>98</sup> incomes and child outcomes, indicate that money from the state – while it can help – does not “close the gap” between families with and without involved fathers steadily on the scene. Well-intentioned child-welfare advocates rightly search out various ways to assist children suffering father-absence. The expert literature, as well as ordinary human experience however, suggest that fathers cannot be easily substituted by more state assistance, or even, generally, by others’ help.<sup>99</sup> These contributions can ameliorate particular situations, but are not sufficient in themselves to constitute a legal and public policy response to father absence.

### **C. What Fathers Get**

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<sup>96</sup> Melissa Murray, “The Networked Family: Reframing the Legal Understanding of Caregiving and Caregivers,”

<sup>97</sup> Marsha Garrison, “Reviving Marriage? Can We? Should We?” 10 *J. L. Fam. Studies* 279, 306-07 (2008).

<sup>98</sup> Margaret F. Brinig and Steven L. Nock, *Legal Status and Effects on Children*, Notre Dame Legal Studies Paper No. 07-21, March 16, 2007 [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=973826](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=973826) (May 7, 2009).

<sup>99</sup> *See also*, Amy Wax, “The Family Law Doctrine of Equivalence,” 1016 (“The government cannot compensate effectively for the lack of seriousness and permanence that plagues many nonmarital or cohabiting relationships, nor can it make up for the uncertainties and instabilities endemic to complex living arrangements or the lack of shared biological ties. Likewise, no known policies can substitute for the daily presence and devotion of a father. The government can strive to get rid of formal distinctions, and society can try to reform its outlook, purge disparagement and disapproval, and regulate the workplace, business, and social life. But these changes cannot eliminate some families’ inherent, structural flaws.”)

A second and final portion of the empirical aspect of the parenting and gender question concerns the positive effects of fathering on men. A broad perspective from which to consider this “flip side” of the parenting and gender question might begin with the well-regarded observations of psychologist Erik Erikson about the seventh stage of psychosocial development: “generativity v. self-absorption and stagnation.” Erikson’s stages of development proposed that a failure to progress to “generativity” -- cultivating strength in the next generation, caring for and taking care of persons,<sup>100</sup> -- could lead even to regressions to earlier stages including “an obsessive need for pseudo-intimacy or of a compulsive kind of preoccupation with self-imagery – and both with a pervading sense of stagnation.”<sup>101</sup> What is “at stake” is the “capacity to commit oneself to concrete affiliations which may call for significant sacrifices and compromises.”<sup>102</sup> It is reasonable to ask here: if not for women and mutual offspring, for whom will men feel called to care and to sacrifice? Will they do so for their parents? Friends? Other people’s children? The evidence indicates that these alliances do not happen with regularity.

As for the specific benefits to men of fathering activity, while a great deal more research needs to be done, there is evidence from neurobiological studies of mice, that paternal activity results in observable brain modifications and related behaviors of benefit to both the father and the offspring, such as “enhanced foraging and exploratory boldness,” social interactivity, and possibly enhanced learning<sup>103</sup> and protection against “age related neural decline.”<sup>104</sup> It may also be related to lasting hormonal changes related to responsive parenting.<sup>105</sup> It is possible, in fact,

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<sup>100</sup> Erik H. Erikson, *The Life Cycle Completed: Extended Version* (with New Chapters on the Ninth Stage of Development by Joan M. Erikson), 69.

<sup>101</sup> *Id.* at 69.

<sup>102</sup> *Id.* at 70.

<sup>103</sup> Terence E. Hebert and Hyun Song, “The biology of attachment: what we don’t know may hurt us,” in *Gender and Parenthood*, 10-11/TBD.

<sup>104</sup> Kelly G. Lambert & Catherine L. Franssen, “The Dynamic Nature of the Parental Brain: Lessons from Vice-Presidential Candidates, Ancient Brains, and Rodent Models,” in *Gender and Parenthood*, 15-21/TBD.

<sup>105</sup> Terence E. Hebert and Hyun Song, “The biology of attachment: what we don’t know may hurt us,” 10-11./TBD

that having children for whom to care “required brains to evolve from the reflexive responses of reptiles to the more complex modern brains exhibiting capacities for focused attention, heightened vigilance, multi-tasking, and enhanced problem-solving one sees in neomammalian mothers,” and also to some extent in fathers.<sup>106</sup> Added to this is tantalizing new research that the “human epigenome” -- a layer of biochemical markers attached to DNA, which can turn genes on and off<sup>107</sup> -- is affected by parenting and being parented. If parenting does change women and men at the genetic level, and in heritable ways when changes occur in germ cells, then in a very tangible sense, involved fathering matters to the identity and well-being of present and future generations.<sup>108</sup>

It follows from the evidence of how parenting potentially affects fathers, and the heritability of the resulting effects, that there is a profound social interest in fathering. This is not only because we are possibly dealing here with the genetic constitutions of future members of society, but because what we do now will affect whether or not society -- including social structures -- will or will not be influenced by “father-conscious” men. One ironic consequence of father absence illustrates the concern: if the literature is correct which correlates domestic violence and father-absence, what is the future for women, children and society if fatherhood is not assisted now?

### **Part III. Legal Proposals**

Part I sketched the legal landscape awaiting proposed laws or policies to assist father-involvement. This Part will offer explicit proposals for promoting fathering and co-parenting,

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<sup>106</sup> *Id.* at 3-4.

<sup>107</sup> Jonathan Corum and Martin Kryzwinski, Mapping the Epigenome, *New York Times*, Nov. 11, 2008, <[www.nytimes.com/imagepages/2008/11/11/science/20081111\\_EPIGENETICS\\_GRAPHIC.html](http://www.nytimes.com/imagepages/2008/11/11/science/20081111_EPIGENETICS_GRAPHIC.html)> (Nov. 11, 2008).

<sup>108</sup> Terence E. Hebert and Hyun Song, “The biology of attachment: what we don’t know may hurt us,” TBD12, 16.

relying not only on the data summarized in Part II, but also upon its suggestions about mechanisms and conditions for securing father-involvement. A “roadmap” through the various proposals is as follows: Their overall goal is the promotion of fathers’ healthy involvement with their children, both directly and via co-parenting with the mother. A first proposed means is to support the relationships in which men are most likely to parent actively -- stable marriages. Conversely, out-of-wedlock conceptions should be discouraged. In the event of divorce, those avenues linking father and child -- custody and support – should be governed by rules which might best preserve healthy father-child and father-mother relationships.

A second means to reach this goal involves preserving and promoting men’s “motivations” and “opportunities” for fathering. The first task here is like the first task described above: promoting healthy relationships with women, beginning with marriage. Here, however, we will emphasize ways to overcome women’s “gatekeeping tendencies when appropriate. A second task for increasing men’s motivations and opportunities requires making explicit invitations to men to answer their children’s needs. A third and sizable task is boosting men’s educational and economic “capital.” A fourth is reducing the degree to which the workplace operates as a parenting barrier, and possibly even re-fashioning it as an ally in the fatherhood project. A final task is shaping social welfare and tax policies to more explicitly reward parenting. While history shows that these policies may be more frequently accessed by women, they would also increase the opportunities for men to devote additional time and resources to parenting.

Three introductory notes are necessary. First, words of caution about law’s potency: it is difficult to determine whether people change their behavior in response to the passage of laws. This may be particularly true in the realm of family law because of the number and variety of

other factors affecting decision making in this area.<sup>109</sup> These factors might include ignorance of the law, the salience of non-rational, emotional factors, pre-existing and external factors, or the interaction of multiple factors. Furthermore, even if a “logical” measure is enacted, based upon good evidence, there is the difficulty of measuring outcomes. Yet it is correctly concluded that law is at least part of the “system that produces and reproduces the dispositions and values of its citizens.”<sup>110</sup> Law can also help change public opinion over time, and thereby indirectly influence mores.<sup>111</sup> There are studies which demonstrate relationships between law and subsequent behavior.<sup>112</sup> In light of all of this, and given the importance of protecting children, it seems that the best stance combines a commitment to further scientific investigations in under-researched areas, with the adoption of laws and policies logically responding to a sound body of data. The matter of involved fatherhood, in other words, is one of those areas of law in which “fairness ...requires that we do the best we can.”<sup>113</sup>

Second, taken together, the proposals offered in this part add up to a public statement in favor of two-sexed, and preferably married, parenting. Some observers axiomatically regard such statements as offensive to non-traditional family groupings. This is a misplaced response, particularly given the character of the proposals, which involve bringing additional support to the child-rearing enterprise, not pushing people out. Furthermore, so long as law and policy makers keep a close eye on risks of domestic violence and sex stereotyping or discrimination, then

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<sup>109</sup> See Ira Ellman, “Why Making Family Law is Hard,” 35 *Ariz. State L. J.* 699, 706 (2003).

<sup>110</sup> Katharine T. Bartlett, “Re-Expressing Parenthood,” 98 *Yale L. J.* 293, 293 (1988).

<sup>111</sup> Marsha Garrison, “The Decline of Formal Marriage: Inevitable or Reversible?” 41 *Fam. L.Q.* 491, 517 (2007) (“Professor Kuran’s description of the public-opinion shift occasioned by Gandhi’s declaration of emergency makes clear, a change in public policy can have a substantial impact on public opinion and thus holds the potential to itself create a bandwagon shift in public attitudes.”)

<sup>112</sup> See e.g., regarding child support collection laws: Irwin Garfinkel *et al.*, “The Wisconsin Child Support Assurance System,” 25 *J. Hum. Resources* (1990):1; Irwin Garfinkel and Marieka M. Klawitter, “The Effect of Routine Income Withholding of Child Support Collections,” 9 *J. Pol’y Analysis & Mgmt.* (1990): 155; Irwin Garfinkel, “Utilization and Effects of Immediate Income Withholding and the Percentage-of-Income Standard: An Interim Report on the Child Support Assurance Demonstration,” 4 *Inst. for Res. on Poverty, Special Report No. 42* (1986).

<sup>113</sup> Ira Ellman, “Why Making Family Law is Hard,” 714.

boosting fathers' involvement is simply a positive good -- sometimes redundant, but often additive or unique, as described above. Furthermore, nothing herein proposed is designed to reduce the social benefits or services flowing to children in non-traditional households, or to institutionalize discrimination in the law. The proposals are designed, rather, to help all children to reap the benefits offered by fathering and co-parenting, and to assist all children to become involved parents themselves -- with all the personal and social benefits this behavior entails -- when they mature. To fail to act upon a growing body of evidence about the good of fathering, on the grounds that some citizens cannot or will not access it, seems to be a decision based upon adults' interests and fears, not children's interests, and not good reason. It also sends the wrong message about the relationship between good scientific data and lawmaking.

Third, because of the many causes and correlates of diminished or absent fathering, the number and variety of proposals to respond to the problem could get unwieldy quickly. For example, improving marital harmony and stability and decreasing divorce would certainly help to preserve a father's involved presence in the home. Obviously, this topic has generated too many thoughtful proposals even to summarize here.<sup>114</sup> Similarly, one could suggest a very wide-ranging selection of public and private programs and policies on the basis of the evidence that men who feel more "competent," or educationally or socio-economically advantaged, are more involved fathers. Again, there is already a great deal of thinking on this subject.<sup>115</sup> When, in our "roadmap," we encounter an area which is already developed, we will simply refer to some of

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<sup>114</sup> See e.g. [www.SmartMarriages.org](http://www.SmartMarriages.org) < [www.acf.hhs.gov/healthymarriage.www.marriagesavers.org](http://www.acf.hhs.gov/healthymarriage.www.marriagesavers.org)> (May 7, 2009).

<sup>115</sup> See e.g. Obie Clayton, Ronald B. Mincy and David Blankenhorn (eds.) *Black Fathers in Contemporary American Society* (2003); Marsha Garrison, "The Decline of Formal Marriage, Inevitable or Reversible?" 519-20 (summarizing data linking improved marital and parenting outcomes to enhanced economic and educational opportunities).

the best, relevant proposals, and note, if available, research about the efficacy of efforts already begun in these areas.

### **A. Relationships and Fatherhood**

Efforts to avoid creating single parent homes begin with discouraging nonmarital sexual relationships, as well as cohabitation, which is responsible now for about 18 % of out of wedlock childbirth.<sup>116</sup> Lowering out of wedlock births is the Holy Grail of public education efforts to strengthen the family. Were these to succeed, children would experience lone-parenting less often. Marsha Garrison correctly points out, however, that we still know “very little” about how effectively to design such programs, and that good measures of existing approaches are incomplete.<sup>117</sup> The nonmarital birth puzzle also has multiple moving pieces, including socioeconomics, education, parental influence, religious identity, mental and physical health, and others, such that one or another kind of sex-education could never be the sole answer.<sup>118</sup> Garrison’s thorough analysis indicates that the best we can probably do at this point is to help provide adolescents (and “20-something women” who are increasing their share of out of wedlock births<sup>119</sup>), particularly among at-risk populations, the economic and educational advantages which correlate with delayed childbearing and marriage.<sup>120</sup> I concur that these are fundamental and necessary projects. I would not fail, however, to add public and private health and educational campaigns explicitly linking the avoidance of premarital pregnancies with

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<sup>116</sup> Sheela Kennedy and Larry Bumpass, “Cohabitation and Children’s Living Arrangements: New Estimates from the United States,” 19 *Demographic Res.* (2008): 1663.

<sup>117</sup> Marsha Garrison, “Reviving Marriage? Could We? Should We?” 328.

<sup>118</sup> See Mathematica Policy Research, Inc., *First-Year Impacts of Four Title V, Section 510 Abstinence Education Programs* (2005), < <http://www.mathematica-mpr.com/publications/PDFs/firstyearabstinence.pdf>> (May 7, 2009).

<sup>119</sup> See Joyce A. Martin *et al.*, “Births: Final Data for 2000,” *National Vital Statistics Report*, vol. 50, no. 5 (2002): fig.3 < [http://www.cdc.gov/nchs/data/nvsr/nvsr50/nvsr50\\_05.pdf](http://www.cdc.gov/nchs/data/nvsr/nvsr50/nvsr50_05.pdf)> (showing that the nonmarital birthrate in the United States for teenaged mothers 15-19 nineteen decreased from 1995 to 2000; during the same years, the nonmarital birthrate among women 20-24 increased)(May 6, 2009).

<sup>120</sup> See Marsha Garrison, “The Decline of Formal Marriage, Inevitable or Reversible?” 331-35.

health, economic and social well-being, and necessary responsibility for the welfare of vulnerable children.

Regarding cohabitation, while it is increasingly common in the U.S., it not only correlates with higher divorce rates, but is relatively unstable itself.<sup>121</sup> Both of these phenomena – divorce and instability -- predict father-absence. For this reason, scholars considering how to stabilize marriage regularly suggest that the law firmly distinguish between marriage and cohabitation<sup>122</sup> This involves rejecting proposals such as that of the American Law Institute<sup>123</sup> and others<sup>124</sup> which would offer dissolving cohabiting partnerships property and support terms similar to those offered at the divorce of married couples. Benefit and tax laws would be scrutinized to ensure that marriage is not “disincentivized” by inadvertently providing unmarried cohabiting couples a better deal, although this is an admittedly complex task.<sup>125</sup> Some states are already going further to distinguish marriage and cohabitation, with proposals to re-instate the denial of custody or adoption privileges to cohabiting households.<sup>126</sup> Outcomes of these types of legislative experiments ought to be monitored.

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<sup>121</sup> R. Kelly Raley, “Cohabitation and Children’s Family Instability” (Population Research Center, Univ. of Texas)(2006) (Our motivation arises from the concern that children whose mothers cohabit are likely to experience unusual amounts of instability in their lives. Previous research suggests that family transitions are stressful for children and that the negative effects of these. . . . Cohabitation is itself an unstable family form. Cohabiting unions in general result in marriage only about half the time, and those that do not result in marriage often dissolve within a couple of years. Furthermore, marriages preceded by cohabitation are more likely to end in divorce.”) (citations omitted)<[http://www.prc.utexas.edu/working\\_papers/wp\\_pdf/01-02-06.pdf](http://www.prc.utexas.edu/working_papers/wp_pdf/01-02-06.pdf). (May 5, 2009).

<sup>122</sup> Marsha Garrison, “The Decline of Formal Marriage,” 519; Margaret F. Brinig and Steven L. Nock, “Legal Status and Effects on Children,” 562.

<sup>123</sup> American Law Institute, *Principles of the Law of Family Dissolution: Analysis and Recommendations*, ch. 6 (2002).

<sup>124</sup> Cynthia Grant Bowman, “Social Science and Legal Policy: The Case of Heterosexual Cohabitation,” 9 *J. L & Fam. Stud.* 1 (2007).

<sup>125</sup> Anne E. Winkler, “The Complexity of Tax and Transfer Programs Regarding Cohabitation: Challenges and Implications,” in *Just Living Together: Implications of Cohabitation for Families, Children and Social Policy*, Alan Booth, Ann C. Crouter (eds.) (Mahwah, New Jersey: Lawrence Erlbaum Associates, 2002), 237.

<sup>126</sup> See e.g. Ark. Act 1(ballot initiative adopted Nov. 1, 2008). This law prevents all children in the state from being adopted or fostered by any adult who is living unmarried with another adult in a sexual relationship. The law applies both to children who are in the care and custody of the Arkansas Department of Human Services, as well as to children who are not in the care of the state.

A final note regarding avoiding the creation of single parent homes. This would also include denying assisted reproductive technologies (“ART”) to unmarried persons. Since the creation of the first “test-tube” child in 1978, no U.S. laws have accomplished this.<sup>127</sup> Prospects for the successful passage of such legislation appeared dim at best, until Nadya Suleman (the media’s “Octomom”) gave birth to eight children via in vitro fertilization in early 2009, bringing her total number of out of wedlock ART births to fourteen. Media coverage of the lack of regulation applicable to America’s fertility industry skyrocketed in the immediate wake of the births, and then dropped off, but not before legislators in several states instituted bills to curb the industry.<sup>128</sup> At this time, the future direction of this area of the law is uncertain.

Laws directed to stabilizing marriage are also a part of any scheme to keep fathers involved, marriage being the place where fathers are “present” to their children, and in the best position to co-parent with mothers. The number of proposals to support “healthy marriages” is, as indicated above, large and growing, thanks to the federal government’s substantial recent funding,<sup>129</sup> and a robust interest among scholars, activists, and policy leaders. One recent analysis seems to indicate persuasively that, to date, explicit marriage promotion does not show the same promise as programs strengthening individuals’ and couples capacities to form stable marriages.<sup>130</sup> For this reason, as well as because the evidence shows that men equipped with education and stable work likely become more involved fathers, the latter type of programs seem a better investment, and should be incorporated more completely than is presently the case<sup>131</sup>

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<sup>127</sup> See The President’s Council on Bioethics, *Reproduction and Responsibility, The Regulation of New Biotechnologies*, 8-13 (Washington, DC: U.S. Gov’t Printing Office, 2004); Helen M. Alvaré, “The Case for Regulating Collaborative Reproduction: A Children’s Rights Perspective,” 40 *Harv. J on Legis.* 1 (2003).

<sup>128</sup> See e.g. Hedrick Heather Teilhet, “Leave Fertility Issues to Families,” *Atlanta J. Const.*, Mar. 19, 2009, A14.

<sup>129</sup> See <http://www.acf.hhs.gov/healthymarriage/>.

<sup>130</sup> See Marsha Garrison, *Reviving Marriage*, 331.

<sup>131</sup> See e.g. Monica K. Miller, “Through the Eyes of a Father: How the Personal Responsibility and Work Opportunity Reconciliation Act Affects Non-resident Fathers and their Children,” 20 *Int. J. of L. Pol’y & the Family*

into federal and state policies and marriage and fatherhood programs for men of all socioeconomic groups.

If a marriage does fail, there are opportunities even in the course of family breakdown to attempt to preserve father involvement. Forty-six states now require some form of parent education prior to divorce.<sup>132</sup> Here, parents are instructed, usually for a few hours, about negotiating parenting post-divorce. Studies have found that such programs focus a good deal on avoiding conflict, but spend little time imparting parenting skills. Nothing is offered by way of later mentoring.<sup>133</sup> It appears then that there is room for some improvement in these programs to the end of promoting fathers' involvement and co-parenting.

Child support orders are another possible vehicle for preserving father involvement. Data suggests that fathers paying child support are more likely to stay involved with their children, but possibly also more likely to experience conflict with the mother.<sup>134</sup> Courts ordering support have also to consider that many nonresidential fathers struggle to pay support because they live in poverty, and may owe child support to more than one mother. States have a variety of legislative strategies for calculating child support in either circumstance; they need to determine which strategies (*e.g.* percentage reductions for after-born children; baseline orders for even the poorest of fathers, etc) more effectively preserve fathers' involvement with each of their children.

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(2006): 55 (suggesting fathers should receive more assistance in training for and finding employment via this or other legislation).

<sup>132</sup> Susan L. Pollet and Melissa Lombreglia, "A Nationwide Survey of Mandatory Parent Education," 46 *Fam. Ct. Rev.* 375 (2008).

<sup>133</sup> *Id.* at 377, citing Matthew Goodman *et al.*, "Parent Psychoeducational Programs and Reducing the Negative Effects of Interparental Conflict Following Divorce," 42 *Fam. Ct. Rev.* 263, 268-69 (2004); *see also* Graeme B. Wilson, "Conflict & Co-Parenting: The Constructs of Non-Resident Fathers," 46 *Fam. Ct. Rev.* 609 (2008); S.A. Wolchik, *et al.*, "Six-year Follow-up of Preventative Interventions for Children of Divorce: A Randomized Controlled Trial," 288 *J. of the American Med. Assn* (2002):1874.

<sup>134</sup> *See* J.A. Seltzer, S. S. McLanahan, and T.L. Hanson, "Will child support enforcement increase father-child contact and parental conflict after separation?" in *Fathers under fire*, ed. Irwin Garfinkel, Sara McLanahan, Daniel Meyer, & Judith Seltzer (New York: The Russell Sage Foundation Publications, 1998), 157-182.

Custody policies are also an important vehicle for preserving fathers' involvement, although the outstanding questions in this area are complex. Sociologist Paul Amato writes that there is persuasive research showing that joint custody helps to keep fathers involved.<sup>135</sup> But there are important variables here. Margaret Brinig suggests that "joint custody may be a fine (and even optimal) solution if desired by two parents who are willing to work hard towards its success," but that mandatory joint custody, "seems to cause a number of other problems," such as re-litigation and the moral hazard of seeking custody in order to reduce child support obligations.<sup>136</sup> A possible proxy for joint custody is the enabling of substantial father-child time; children and fathers report that this makes them feel close, and for fathers, more competent.<sup>137</sup>

## **B. Motivating and Providing Opportunities for Fathering**

Turning to the mechanisms for motivating and providing opportunities for unmarried fathers to stay involved, the data above seems to indicate that fathers should be explicitly invited to parent, and presented with evidence of their children's "needs" for fathering. The public information materials and programs sponsored by the National Fatherhood Initiative include these messages.<sup>138</sup> Programs reaching out to nonresident fathers (or fathers to be) would also benefit from discussing with fathers and mothers, the parents' varying perceptions of mothers' gatekeeping tendencies, and how to overcome these when appropriate (i.e. where violence is not

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<sup>135</sup> Paul R. Amato and Julie M. Sobolewski, "The Effects of Divorce on Fathers and Children: Nonresidential Fathers and Stepfathers," in *The Role of the Father in Child Development*, 341, 349; see also Chien-Chung Huang *et al.*, "Child Support Enforcement, Joint Legal Custody, and Parental Involvement," *77 Soc. Serv. Rev.* (2003): 255, 272; Judith A. Seltzer, "Father by Law: Effects of Joint Legal Custody on Nonresident Fathers' Involvement with Children," *35 Demography* (1998): 135.

<sup>136</sup> Margaret Brinig, "Does Parental Autonomy Require Equal Custody at Divorce?" *65 La. L. Rev.* 1345 (2006).

<sup>137</sup> Margaret Brinig, "The Effects of Integrated and Intentional Parenthood on Children," *Notre Dame Law School Leg Studies Research Paper* No. 08-34, <[ssrn.com/abstract=1288046](http://ssrn.com/abstract=1288046)>, October 22, 2008, 6 (May 6, 2009); Paul R. Amato and Julie M. Sobolewski, "The Effects of Divorce on Fathers and Children: Nonresidential Fathers and Stepfathers," in *The Role of the Father in Child Development*, 341, 349-50.

<sup>138</sup> National Fatherhood Initiative, <[fatherhood.org/training/asp](http://fatherhood.org/training/asp)>.

indicated). Nonresident fathers are regularly present at the birth of their children, which is a good time to begin this type of communication (if not before, in the event they attend mothers' prenatal care). In both the public information and program materials, men should be exposed to information about how fathering benefits men too.

Information about marriage, parenting and gender should find its way into high-school curricula. Given the sex-saturated culture of the U.S., and the gender-identity "work" performed during adolescence, it may be particularly important to share with high-school students the data about good parenting practices, including information on the importance of fathering, mothering and co-parenting. Research indicates that high school education of this type may help improve students' knowledge, and also their interpersonal skills related to marriage, but that students from lone-parent homes may have benefited the least.<sup>139</sup> To date, only seven states offer "relationship education" for youth. The material tends to focus on "relationship skills" only.<sup>140</sup> There is tremendous room for improvement in this area.

Another promising, if difficult, approach for boosting father- involvement involves improving men's educational and economic situations, as described above. A broad public policy strategy to assist both currently disadvantaged fathers, and the fathers of the future, would help males to obtain the attributes of "fathers who succeed." This would require specific attention to the issues of male school success, drop-out rates, and the causes for men's recently falling

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<sup>139</sup> Sarah Halpern-Meekin, "School-Based Marriage Education: An Evaluation of Florida's High School Relationship Education Requirement" (Paper presented at the annual meeting of the American Sociological Association Annual Meeting, Sheraton Boston and the Boston Marriott Copley Place, Boston, MA), July 31, 2008, <[http://www.allacademic.com/meta/p241808\\_index.html](http://www.allacademic.com/meta/p241808_index.html)>(December 17, 2008).

<sup>140</sup> Center for the Study of Social Policy, "Policy Update 2008, State Policy Data Report, 2008, Policy 17: Healthy Marriage and Relationship Education, 2008, <<http://www.cssp.org/policymatters/pdfs/17.%20Healthy%20Marriage%20and%20Relationship%20Education%20-%202008.pdf>> (citing Fla., Okla., Pa., S.D., Tenn., Texas, Utah) (May 6, 2009).

college-attendance, relative to women.<sup>141</sup> Some have suggested increased attention to trade or vocational education, or apprenticeships, to close the gap.<sup>142</sup> While any such policies have their own importance for the well-being of men and society, explicitly tying them also to cultivating fatherhood and co-parenting – for the benefit of men, women, children and society -- might help quell suspicion that assistance to men is intended to threaten the recent gains or achievements of women.

Workplace laws and policies also affect men's opportunities and motivations for fathering, as described above. Both external laws and internal company policies have the potential to facilitate fathers' spending more time with their children, and valuing fathering to a greater degree. At this time, current federal law, the Family and Medical Leave Act, (FMLA)<sup>143</sup> requires larger employers to allow employees of either sex to take limited unpaid leave for parenting responsibilities, including births, adoptions and serious medical conditions. Eleven states have augmented or altered federal guarantees.<sup>144</sup> There are two reasons current laws are insufficient for the needs of fathers and children today. The first concerns the terms of the statutes: many employers are not covered and many workers cannot afford unpaid leave. Also involved fathering requires flexible work hours throughout the child's life, not simply at childbirth or when the child is seriously ill. The content of needed reform is obvious, although

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<sup>141</sup> See Mark Mather and Dia Adams, "The Crossover in Female-Male College Enrollment Rates," (Population Reference Bureau, 2007) <<http://www.prb.org/Articles/2007/CrossoverinFemaleMaleCollegeEnrollmentRates.aspx>> (December 17, 2008).

<sup>142</sup> See e.g. Wade Horn, "Improving Life Outcomes for Poor and Vulnerable Men as a Means of Combating Poverty," <<http://www.spotlightonpoverty.org/ExclusiveCommentary.aspx?id=72da42e2-9628-4d2b-bc2f-e75c0582d29f>> (May 6, 2009). See also Charles Murray, "Should the Obama Generation Drop Out?" *New York Times*, December 28, 2008, WK9.

<sup>143</sup> The Family and Medical Leave Act of 1993, Public Law 103-3 (Enacted February 5, 1993), as amended by Section 585 of the National Defense Authorization Act for FY 2008, Public Law [110-181] (enacted January 28, 2008).

<sup>144</sup> Department of Labor, Wage and Hour Division, "Federal v. State Family and Medical Leave Laws," May 6, 2009, <<http://www.dol.gov/esa/whd/state/fmla/index.htm>> (reporting California, Connecticut, Hawaii, Maine, Minnesota, New Jersey, Oregon, Rhode Island, Vermont, Washington, and Wisconsin, and the District of Columbia) (May 6, 2009).

calculating how to pay for it is not. Proposals to improve family and medical leave at the state or federal level will undoubtedly have to be innovative in order to avoid economic barriers. Even incremental improvements would help.

A second reason that current law is insufficient concerns workplace culture. Male employees – as distinguished from female – perceive that they will face personal and professional censure if they choose to trade off work for fathering. This is discussed further in the section on “culture” in Part IV.

A complement to improved workplace laws and policies would be improvements in the way state institutions – *e.g.* schools, courts, child-welfare programs -- obtain parents’ involvement with children’s needs. In line with the research cited above, invitations to fathers as well as to mothers, should be explicit and should articulate the important benefits associated with each parent’s participation. Meetings with parents should be scheduled at times convenient for both, even if this proves more difficult in the case of fathers.

Social welfare legislation is another possible vehicle for assisting fathering and co-parenting, if less directly. The goal here is would be to provide additional compensation for the work of caring for children, available on a gender-neutral basis, so as to allow parents’ greater economic freedom to put more effort into parenting. Internationally, such proposals have garnered the full-throated support of the United Nations Economic and Social Council<sup>145</sup> Domestically, several Republican political analysts have recently proposed pension credits or even college tuition credits for caretaking parents.<sup>146</sup> One possible indirect effect of such a program would be to stabilize marriages by helping women -- who are most likely to take the

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<sup>145</sup> United Nations Committee on Economic Social and Cultural Rights “General Comment No. 19: The Right to Social Security, February 4, 2008, page 6, nos. 18-19; page 10, no. 32, p. 6, no. 19, and page 10, no. 32 <<http://www.unhcr.org/refworld/publisher,CESCR,GENERAL,,47b17b5b39c,0.html>> (May 5, 2009).

<sup>146</sup> Ross Douthat & Reihan Salam, *Grand New Party: How Republicans Can Win the Working Class and Save the American Dream*, (New York: Doubleday 2008): 171.

benefit if history is any guide – to afford the work/home strategy they would most prefer. As related above, this outcome correlates with lowered divorce rates,<sup>147</sup> another boost to involved fathering and co-parenting.

Tax policy could also ease the financial burdens of families with children -- enabling one or both parents to spend more time parenting. Several political analysts have recently suggested, for example – on the premise that families ought to be helped to make “investments in their offspring” -- that the federal “child tax credit” should be increased dramatically, even by five times. They have also suggested that it be available to parents up to the amount not only of their income tax burden, but also their payroll taxes, on the theory that these very children will pay taxes later.<sup>148</sup> To this proposal I would add that state tax authorities could offer additional child tax credits or deductions for children’s presence in a family or even for the value of some of the time mothers and fathers spend parenting which is not compensated by employers. This is analogous to current state laws which offer tax credits or deductions (against the state tax burden only) for parents’ savings toward children’s college education.

#### **Part IV. Culture:**

While the law is an essential aspect of promoting fathering and co-parenting, “culture” undoubtedly also plays a role. By “culture” here, I am referring to the sum total of persons and institutions which communicate ideas in society,<sup>149</sup> as well as the messages they communicate about what is important and what is the normative “scale of values”<sup>150</sup> Such messages are

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<sup>147</sup> See W. Bradford Wilcox and Jeff Dew, No One Best Way, supra note \_\_\_.

<sup>148</sup> Ramesh Ponnuru, “A tax reform to run with: \$5000 per child and other winning ideas,” *National Review*, April. 24, 2006 ; Ross Douthat & Reihan Salam, *Grand New Party*, 167-68.

<sup>149</sup> Pope John Paul II, “Address to the World of Culture,” November 9, 1999 [www.vatican.va/holy-father/john\\_paul\\_ii/travels/documents/hf\\_jp-ii\\_spe\\_0911199](http://www.vatican.va/holy-father/john_paul_ii/travels/documents/hf_jp-ii_spe_0911199) (November 9, 2008).

<sup>150</sup> Cardinal Giacomo Cardinal Biffi, “Catholic Culture for True Humanism,” January 2003, [www.vatican.va/roman\\_curia/congregations/cfaith/documents/rc\\_con\\_cfaith\\_doc\\_2](http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_2) >(November 20, 2008).

conveyed by important institutions such as the family, the workplace, government, education, and religions, by individual leaders in these institutions, and in arenas such as politics art, literature, entertainment, and the communications media.

The current “culture” regarding fatherhood and co-parenting is quite complex. Arguably, the “nurturant, involved” father is becoming more normative.<sup>151</sup> But of course the statistics on lone-parenting indicate that, especially among the more socially and economically disadvantaged, this is not the lived culture of fatherhood. It is not a norm robustly communicated by family law or other legal policies, aside from federal and state fatherhood initiatives. And private institutions, in particular the workplace, are not doing nearly enough to support it.

It is good news then, that culture can and has changed in the matter of fatherhood historically. Sociologists have chronicled these changes. They write that dominant norms for fathers have ranged from “moral (biblical) teacher” to “breadwinner,” to “masculine models for sons,” to today’s “involved nurturant fathers,” who are also to be companions for the mother, protectors, models, moral guides, and breadwinners.<sup>152</sup> We are likely in the midst of this latter change.<sup>153</sup>

Because culture is communicated via so many outlets, not all of which can be considered in detail here, I will treat only the very largest influences, as well as those which might be most easily “incentivized” to join the cause of fatherhood, on the grounds that they may obtain a reciprocal advantage. The former group certainly includes religion, work and education. The large influence of the family as a cultural agent is treated throughout this paper. Law, also a large

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<sup>151</sup> Mark T. Morman & Kory Floyd, “A Changing Culture of Fatherhood: Effects on Affectionate Communication, Closeness, and Satisfaction in Men’s Relationships with their Fathers and their Sons,” 66 *Western J. of Communication* (2002): 395.

<sup>152</sup> Elizabeth H. Pleck, “Two Dimensions of Fatherhood: A History of the Good Dad-Bad Dad Complex,” in *The Role of the Father in Child Development*, ed. Michael Lamb, 32-33.

<sup>153</sup> Mark T. Morman & Kory Floyd, “A Changing Culture of Fatherhood: Effects on Affectionate Communication, Closeness, and Satisfaction in Men’s Relationships with their Fathers and their Sons,” 66 *Western J. of Communication* (2002): 395.

influence, has already been treated above. I will only add here regarding the law, that the state has several incentives for assisting fatherhood and co-parenting. There are benefits for the public treasury -- in the form of reduced domestic relations litigation, reduced welfare payments, and possibly reduced crime, teen pregnancy, school failure, and other correlates of father-absence. Work and education are also among the institutions which should perceive the reciprocal advantages of more involved fathering, given the indirect benefits employers would likely reap from stability in the lives of their employees,<sup>154</sup> and the benefits teachers and administrators would reap from improved stability in the lives of their students.

Religions are among the most powerful transmitters of fundamental values, which certainly include the roles that fathers and husbands should play. Men who practice a religion tend to be more involved fathers.<sup>155</sup> Various religions are already well-attuned to the need to support involved fathering and co-parenting. Some are participating in federally funded fatherhood programs.<sup>156</sup> Some are taking up the relevant questions with their own members with increased persistence in recent years. Within Roman Catholicism, for example, the teachings of John Paul II about the “theology of the body,” as well as his plentiful social teachings on the crucial roles of parents and families, have resoundingly confirmed that “fatherhood” and motherhood are primary vocations, closely tied to the entire meaning of life – which the Church identifies as eternal loving union with God and one another.<sup>157</sup> Various Protestant Christian

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<sup>154</sup> Melinda Forthofer, Howard Markman, Martha Cox, Martha, Scott Stanley, and Ronald Kessler, “Associations between work loss and marital distress in a national sample, *Journal of Marriage and the Family* 58 (August 1996): 597.

<sup>155</sup> See W. Bradford Wilcox, “Religion and Fatherhood: Exploring the Links between Religious Affiliation, Gender Role Attitudes & Paternal Practices,” <http://www.princeton.edu/~sociolog/pdf/wilcox.pdf>. (November 20, 2008); W. Bradford Wilcox, *Soft Patriarchs, New Men: How Christianity Shapes Fathers and Husbands* (Chicago: University of Chicago Press, 2004), 224–231.

<sup>156</sup> See e.g. National Fatherhood Initiative, “Christian Based Programming,” [www.fatherhood.org/Christian](http://www.fatherhood.org/Christian) (January 2, 2009).

<sup>157</sup> John Paul II, *Man and Woman He Created Them: A Theology of the body* (trans. and introduction, Michael Waldstein)(Boston: Pauline Books and Media, 2006); John Paul II, *Familiaris Consortio* (1981); John Paul II,

denominations have in the past several decades also placed renewed emphasis upon scriptural narratives' norms regarding the duties of husbands and fathers.<sup>158</sup> Being such important cultural players, religions need to be provoked continually by leaders and members to engage with the needs of parents and children in a sustained way. The National Fatherhood Initiative survey indicated that when men need help regarding their family, they are not inclined to turn to churches.<sup>159</sup> Obviously religious leaders are not equipped to address all aspects of family distress; but they are uniquely positioned to communicate that moral and spiritual "success" are closely related to behavior in the central love relationships most human beings will take up – marriage and parenting.

Work also transmits powerful messages about fatherhood and co-parenting. The National Fatherhood Initiative's survey of men's opinions showed that 4 percent believed that work was "an obstacle to being a good father."<sup>160</sup> Inadequate legal rights regarding parenting-time are just a part of the story, as already noted above. Unwritten norms about the role of fathers, communicated by peers, managers, and companies at large, play an important role in discouraging fathers from involving themselves more with their children. Fathers, and employers too, regularly understand companies' "family friendly policies" as part of a strategy to attract and retain women only.<sup>161</sup> Consequently, in the United States, firms with such policies find that few men take advantage of them.<sup>162</sup>

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*Mulieris Dignitatem* (1988); Benedict XVI, *Deus Caritas Est* (2005); The Congregation for the Doctrine of the Faith, "On the Collaboration of Men and Women" (2004); John Paul II, "Letter to Families" (*Gratissiman Sane*) (1994).

<sup>158</sup> W. Bradford Wilcox, *Soft Patriarchs, New Men: How Christianity Shapes Fathers and Husbands* (Chicago: University of Chicago Press, 2004).

<sup>159</sup> National Fatherhood Initiative, *Fathering Attitudes Survey*, 27.

<sup>160</sup> National Fatherhood Initiative, *Fathering Attitudes Survey*, Executive Summary, 2.

<sup>161</sup> Carol J. Williams, "Law firms turning to a family-friendly culture to keep female attorneys," *Los Angeles Times*, Sept 27, 2008, A1.

<sup>162</sup> *Ibid.*

Various sociologists have suggested non-legal methods to overcome the workplace's culture of fathering. These include companies' encouraging male senior managers and immediate supervisors, to make time for fathering.<sup>163</sup> Firms that offered family support, fatherhood education, and even on-site day care would be sending even more positive messages.<sup>164</sup> Some authors have suggested that a first-rate strategy would involve making fatherhood part of a firm's overall "corporate strategy."<sup>165</sup> This would be similar to the way companies such as "Creative Memories" scrapbooking appeal directly to women representatives with solicitations reading "Would your dream job include? ...freedom to put family and personal priorities first?"<sup>166</sup> Motherhood is embedded in the job. Analogously, companies supporting involved fatherhood would fashion recruitment and retention policies with fatherhood in mind, put "fatherhood monitoring" into managerial job descriptions, and measuring fatherhood impacts of various business practices. These policies would be accompanied by well-articulated personal and business rationales: *e.g.* happy fathers are good for business; fathers benefit from caring for children.<sup>167</sup>

A good workplace culture would be more effective if paired with a less materialistic "consumer culture." At the risk of painting with a broad brush, the U.S. consumer culture encourages men and women to earn more to spend more. Our current recession has revealed in painful detail Americans' tendencies to overspend, undersave, and live far beyond our means. Fathering – which is still synonymous with "providing" in the minds of so many men<sup>168</sup> – cannot

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<sup>163</sup> Graeme Russell and Carl Philip Hwang, "The Impact of Workplace Practices on Father Involvement in Michael Lamb, ed., *The Role of the Father in Child Development*, 476, 480, 490.

<sup>164</sup> *Id.*, 477.

<sup>165</sup> *Id.*, 481.

<sup>166</sup> See <http://www.creativememories.com/MainMenu/Join-Our-Team/Why-Creative-Memories> (Dec. 28, 2008).

<sup>167</sup> Graeme Russell and Carl Philip Hwang, "The Impact of Workplace Practices on Father Involvement," in Lamb, ed., *The Role of the Father in Child Development*, 481-82, 490.

<sup>168</sup> See *e.g.* Nicholas W. Townsend, *The Package Deal* (Philadelphia: Temple University Press, 2002), 117-137, 194 ("[M]en see being a good worker, a responsible employee, and a reliable provider as an expression of their paternal

easily be advanced without mitigating consumerism. Fortuitously, in 2008, several public interest groups weighed in on the virtues of “thrift.”<sup>169</sup> Religions are also likely transmitters of the “anti-consumerism” message. A recent intervention by the Holy See at the United Nations denounced “a lifestyle, and even more an economic model, solely based on increased and uncontrolled consumption. ...It also becomes unsustainable from the standpoint of ... above all ... human dignity itself, since the irresponsible consumer renounces his own dignity as a rational creature and also offends the dignity of others”<sup>170</sup>

Finally, turning to educational institutions, two means of promoting fatherhood are suggested by the research. The first involves incorporating discussions about fatherhood and co-parenting in curricula concerning the family, as already noted above. A second path involves teachers and educational institutions inviting fathers quite explicitly to become involved with their children’s education, and scheduling events during times fathers can attend.<sup>171</sup>

## CONCLUSION

Three final reflections highlight the importance of attending now to both cultural and legal messages affirming fatherhood. First, if we do not involve fathers with their wives or partners or children now, we risk creating a long-run situation in which more men than women will be operating “childless” in the public square, while more women than men will be attempting to negotiate both home and work obligations alone. We would become a society in which both the cultural messages, and the policies adopted by our most important institutions

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affection....”); M. Sue Crowley, “Men’s Self-Perceived Adequacy as the Family Breadwinner: Implications for Their Psychological, Marital, and Work-Family Well-Being,” 19 *J. of Fam. and Econ. Issues* 7 (Spring 1998).

<sup>169</sup> David Blankenhorn, *Thrift: A Cyclopedic* (New York: Institute for American Values, 2008).

<sup>170</sup> Zenit.org, “Holy See on Economic Crisis,” Oct. 31 2008, <<http://zenit.org/article-24128?l=english>> (December 27, 2008).

<sup>171</sup> See Daniel M. Bagner and Sheila M. Eyberg, “Father Involvement in Parent Training: When Does It Matter?”

(often led by men) would be set by child-free men. In other words, doing too little for fatherhood now, means greater difficulty later in obtaining leadership, laws, policies and cultural support for the proposition that fatherhood and co-parenting is a good and to be encouraged.<sup>172</sup> It also like means fewer women in positions of authority due to the lack of the kind of assistance that only another motivated parent is likely to provide to children.

Furthermore, a society with fewer “father conscious” men will be a society in which men have not achieved the skill sets that appear to derive from parenting, as described in some of the neurobiological evidence above. Men in this society will more often live and even lead, without attention to the long term needs of the vulnerable. They will be the regressing, or “stagnant” versus generative men, written of by Erik Erikson.<sup>173</sup> At the close of June Carbone’s book, *From Parents to Partners: The Second Revolution in Family Law*, she tells a story intended to characterize how motherhood transformed her. Describing an encounter between her children and a potentially dangerous animal, she writes: “I felt almost no fear. I no longer had the luxury; I was a parent.”<sup>174</sup> How could we welcome a future society in which fewer and fewer men possessed this skill or understanding?

Second, without a robust concept of fatherhood, it will be easier to lose the important cultural notion that the procreative aspect of sex is important. This puts sex, from men’s perspective, on the same plane as personal entertainment. This is particularly dangerous to women who would likely be even more vulnerable to sexual violation, exploitation and objectification. Women would also continue to bear the “costs” (more than financial of course) of

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<sup>172</sup> This is a very practical shortcoming of Martha Fineman’s theoretical proposal that family law reorganize around the mother-child dyad, and cease attempting to coax fathers to take up nurturing and co-parenting responsibilities. (See Fineman, “Why Marriage?”) It would seem more difficult to persuade the men who have been set free of obligations to the mothers of their children, to legislate willingly to provide women and children the very generous benefits lone-parenting requires.

<sup>173</sup> Erik H. Erikson, *The Life Cycle Completed* (Extended Version by Joan M. Erikson) (New York: W. W. Norton & Co., 1998), 57.

<sup>174</sup> Carbone, *From Partners to Parents: The Second Revolution in Family Law*, 241.

pregnancy, childbirth or abortion, and childrearing. Respect for women, and for the full powers of sexual intercourse, go hand in hand as a matter of women's naturally-given childbearing capacities. The more removed men become from fathering and co-parenting, the less apparent this will be.

Third and finally, a reduced commitment to co-parenting indicates a reduced commitment to the idea that men's and women's differences are ultimately directed toward communion or relationship, or toward the bearing of good fruit. Males and females are the first dyad in history. Together they can "produce" more than the sum of their parts. In the face of a break between these two – a break concerning their own child, the physical manifestation of their one-flesh union – it will not do to throw up our hands. Human beings appear to have been fashioned to thrive when we bring diverse things together. Of course, we get "friction" -- to use the language of T.S. Eliot in his *Notes on Culture*<sup>175</sup> -- but we also get new life. What are the alternatives to forging a relationship between the man and the woman, and between each of them and their child? One possibility involves seeing sex-based gifts as trump cards, useful for browbeating one another. Another possibility is a vision of two-sexed humanity in which differences are exaggerated. Both of these tendencies feature in history and today. In either case, the man and the woman miss the opportunity for relationships. In either case, children lose. A better position for law and for culture, in light of the above evidence about parenting and gender, is to invite both the man and the woman to continue to collaborate on what they have made together.

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<sup>175</sup> T.S. Eliot, *Notes on a Definition of Culture*, (New York: Harcourt, Brace and Co., 1948), 50, 58.