



But Are the Kids Really All Right?

Egalitarian Rhetoric, Legal Theory and Fathers

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*The underlying but disguised premise of a widely acclaimed recent movie, *The Kids Are All Right*, is that children do not need fathers. Because fatherhood is the only remaining source of masculine identity, however, this premise damages not only children (especially boys) and men but also, by implication, society as a whole.*

*The Kids Are All Right*¹ is a deceptive title for the popular movie that has so effectively promoted gay marriage. A longer but more descriptive title would have been “The Kids Are All Right with Two Moms but No Dad.” The story revolves around Jules and Nic, the genetic mothers of Laser and Joni. Jules is a somewhat flighty woman in search of a “meaningful” career, Nic an ambitious and somewhat prissy professional. Paul, the sperm donor, has long been out of the picture. One day, though, the children decide to find him. Not only do Laser and Joni find him, they begin to like him. Paul is an unpretentious co-op farmer. With the spontaneous, honest and non-conforming

ways of an aging hippie, he becomes a vaguely exotic figure for the children of an upper-middle-class suburb. They hesitate to tell their mothers about him. When the women meet Paul, sparks fly. Jules finds him attractive and has an affair with him. Nic dislikes him. For one thing, she considers Paul not quite respectable and therefore not a good influence on the children. More important, though, she worries about losing control over her Jules and the children. Nic finds out about the affair, of course, and Jules feels guilty. She tells Paul to get lost. After a long talk about their feelings, Nic promises to be less manipulative. Now that the intruder and his influence are gone, the two women restore order. As for the children, they seem uninterested in maintaining relations with their father.

This movie features not only A-list actors—Julianne Moore and Annette Bening—but also high production values. It is in addition, nonetheless, overt propaganda for gay marriage. It presents a family with two mothers as if it were no different, certainly not in any significant way, from a family with one mother and one father, two fathers or any other domestic arrangement. In fact, it presents Jules as the stereotypical wife and Nic as the stereotypical father (or father figure). Viewers could never imagine that children might actually need fathers on an enduring basis in daily life (as distinct from genetic information about sperm donors). In other words, the movie confirms what has long been conventional wisdom in our society: that fatherhood means little or nothing.

Consider the dominant image of fatherhood not only in popular culture but also in elite culture—which is to say, that of academics in the humanities and social sciences, social service agencies, government bureaucrats, politicians, lawyers and even journalists. It is deeply hostile to fathers.² Many academics, in particular, have tried to “deconstruct” fathers, whether “patriarchal” ones or not. Prevalent notions about fathers, both popular and academic, suggest that they are not necessities at all but either luxuries at best (as assistant mothers or walking wallets) or liabilities at worst (as potential molesters).

During the 1980s and 1990s, some feminists began to promote reproductive autonomy—complete control over reproduction—for women.³ They tried to deconstruct the legal definition of fatherhood by exposing its fictitious or contradictory features. But their strategy entered a new phase with the rise of single motherhood by choice and, later, the emergence of controversy over gay marriage. Both movements had political implications, and it became “politically incorrect” to challenge either. To oppose the former was to endorse misogyny, they argued, and to oppose the latter was to endorse “homophobia.” In other words, they tried to silence any opposition. We suggest that the trivialization of fatherhood, let alone its demonization, harms not only men (both straight and gay) but also children and women (or at least straight women). Ultimately, therefore, it will harm society itself.

We begin this essay by commenting on (1) the academic background of current controversies over the family. Next, we discuss two feminist approaches to parenthood in the context of debates over gay marriage: (2) an ostensibly egalitarian one that relies on *de-gendering* and (3) an ostensibly egalitarian one that relies on *re-gendering* (for women). We continue by discussing (4) the need of children for fathers; (5) some legal





measures that could support fathers; (6) the need of men for fatherhood; and (7) the need of democratic societies for equality.

BACKGROUND

Political and academic battles over marriage and the family have raged in the West for over a century. Feminists have traditional notions of women, especially of their functions within and beyond the family. Evolutionists, nationalists and religious traditionalists have reminded us that the purpose of parenthood is survival. Evolutionists have focused on the “selfish” genes of individuals, nationalists on the demographic requirements of states, and religious traditionalists on the needs of families within communities. Recently, though, the debate has shifted dramatically under the impact not only of extreme individualism (a perversion of liberalism) but also that of collectivist movements such as feminism and its gay offshoot. The latter have fixated on “gender” in the same way that Marxism did on “class” and National Socialism on “race”—that is, as the central problem to be solved on our way to some utopian order.

Complicating the debate has been the simultaneous rise of postmodernism, which directly or indirectly provides academic legitimation for ideological forms⁴ of both the feminist and gay movements. Postmodernism emerged out of the “Frankfurt School” of neo-Marxism. Advocates deny the possibility of knowing objective truth (which departs from Marxism), adding that what passes for objective truth is always biased in one way or another and therefore subject to “deconstruction” (which continues the neo-Marxist “hermeneutics of suspicion”). Postmodernists use deconstruction directly to attack opponents (who include those who foster just about everything “traditional”). Because postmodernists attack all claims to objective knowledge, including those of science, moreover, one result of this fashion has been to re-create a form of Cartesian dualism. One side is the material, or natural, order. Though no longer evil or inferior, it is unknowable and therefore politically irrelevant. Opposing it is the mental, or cultural, order; people impose that on nature, say postmodernists, to serve their own political and economic interests.

To protect themselves, however, postmodernists refrain from following their own logic to its logical conclusion by deconstructing their favorite political ideologies (let alone their own epistemological theories). And this opportunistic inconsistency creates two more serious problems. First, if objective truth about the natural order were unknowable and irrelevant, then anyone could reduce all debates to mere relativistic “discourses” about “social constructions.” But they do not do that. They resort to expediency, not relativism, arguing that some “social constructions” truly are preferable to others. Second, if all “social constructions” were equally arbitrary, then anyone could refuse to acknowledge any historical or cross-cultural patterns.⁵ But they do not do that, either. They resort to expediency, once again, by referring repeatedly to the “bourgeois,” “colonial” or “patriarchal” patterns.

As for feminism, that has taken two major forms over the last fifty years. Many feminists since the 1960s (at least in the United States and Canada) have embraced egalitarianism and thus absorbed the Civil Rights model of political activism. For them,

“equality” has meant sameness. Men and women have slightly different bodies but are, for all intents and purposes aside from reproduction, alike and therefore interchangeable in a society that removes the artificial barriers of gender. Other feminists since the 1990s have embraced an ideological worldview and thus absorbed the Black Power model of political activism (but also that of some feminists in the late nineteenth and early twentieth centuries). For them, hierarchy has replaced equality. Men and women are not only different but also unequal; from this point of view, women are superior to men. Clearly, these feminists have fostered a form of dualism: “us” versus “them,” which in this case means female versus male. Under the protective guise of postmodernism, both egalitarian and ideological feminists have felt free to deconstruct marriage, fatherhood, gender and even sexual dimorphism without taking seriously any critiques—all of which are presumably biased in favor of men and therefore contaminated from the outset.

DE-GENDERING PARENTHOOD

All egalitarian feminists, by definition, promote the equality of men and women. Some of them believe that this ideal can accommodate the few innate differences between men and women, if society can value the distinctive features of both sexes and thus place them in a context of complementarity. But many egalitarian feminists believe that equality implies the sameness of men and women. They use the discredited notion of “separate but equal” races to illustrate their point about “separate but equal” sexes. Just as segregation was inherently wrong because of its origin in white racism, gender is inherently wrong because of its origin in male sexism. And yet the obvious fact is that men and women—certainly as fathers and mothers—are *not* quite the same. To solve that problem, these egalitarian feminists rely on two supporting ideas.

One idea that supports egalitarian feminism refers to *culture* (masculinity and femininity). Yes, a few *gender* differences remain after decades of de-gendering. But these are mere “social constructions” and should therefore have no legal credibility. In fact, some egalitarian feminists argue that “gender equality” per se would be an oxymoron, public rhetoric aside, because all gender differences correlate with inequality and discrimination (against women, from their point of view, not against men). To achieve true equality, in short, would mean abolishing gender itself, *including* the notion of gender equality. It would mean *completing* the process of de-gendering, which began long ago, by eliminating every vestige of this cultural system and therefore eliminating every distinction not only between men and women in general (although American feminists have generally refrained from demanding the elimination of a law that requires young men but not young women to register for the draft)⁶ but also between husbands and wives or fathers and mothers in particular. The other idea that supports egalitarian feminism refers to *nature* (maleness and femaleness). Yes, a few *sex* differences will always exist. But these are vestigial and should therefore have no legal status.

Those who adopt this version of egalitarian feminism (or its offshoot, the movement for gay marriage) oppose legal distinctions between fathers and mothers. They believe



that anyone who chooses to be a parent—that is, anyone who is capable of loving and caring for children—is an effective one. After all, according to conventional wisdom, “love” is the main or even the only thing that children need from parents (partly, but not only, because children can rely on the state if necessary to look after their material or physical needs). Inherent in the logic that equates equality and sameness is the notion that fathers and mothers are *interchangeable*. And from this, it follows that no type of family is inherently better than any other. There is no such thing as an ideal family, therefore, only a wide range of “alternative families.” A good family can form around a straight couple, a gay couple, a single parent, a group of parents, and so on.

Equality is surely a noble ideal, one that supports the most fundamental premise of democracy. Whether it actually serves the needs of real children when applied to parenthood in particular, though, is another matter.

With all this in mind, consider the perspective of one expert on feminist legal theory and family law. Linda McClain relies on egalitarianism—that is, egalitarian feminism—to legitimate her approach to parenting. “By proposing a focus upon fostering equality,” she writes, “I invite attention to two dimensions of equality—equality within families and equality among families.”⁷ We suggest that equality is for her the means to an end, not the end itself. In other words, we suggest that her ultimate end is to establish the primacy of *personal autonomy* (especially for women) within the legal context of equal persons.

McClain argues that only “inclusive marriage,” which includes both straight and gay unions (although she says nothing about polygamous ones), expresses true equality by acknowledging the importance of neither gender distinctions nor sexual differences. Historic definitions of marriage, by contrast, have always directly or indirectly expressed the inequality that both gender distinctions and sexual differences assume. “Marriage was a hierarchical relationship,” she writes, “in which women lacked capacity because their legal personhood, under the doctrine of coverture, was suspended. Consider this puzzle about the civic role of families: even as married women were denied personal self-government within marriage and equal citizenship within the polity, they were thought to meet their civic obligations—and to foster civic virtue—by serving their husbands and children.”⁸ Her main point is that marriage, like almost everything else, has changed a great deal over the centuries. The idea of love and the insistence on voluntary marriage, she points out as examples of cultural evolution, go back to the Enlightenment.⁹

To put all this in slightly different terms, McClain comes close to ignoring sexual (innate) differences as factors in parenthood by conflating them with gender (cultural) differences. “[I]n light of family law’s move to gender neutrality in assigning rights and duties within marriage,” she asks, “is the gendered definition of marriage justifiable as reflecting ‘real’ or ‘inherent’ differences between the sexes? Can the state offer an ‘exceedingly persuasive justification’ for defining marriage by using a sex-based classification? Or are sex-based rules anachronistic or not sufficiently substantial to justify different treatment in marriage?”¹⁰ These questions are clearly rhetorical.

McClain refers to legal reforms that gave women the right to vote (which meant that a man was no longer the “political representative of the household”) and more recent

ones that gave women reproductive autonomy (notably by permitting abortion). With legal theory in mind, she cites “contemporary understandings of the constitutional liberty of spouses to engage in non-procreative sexual intimacy and of a wife’s right to make decisions about pregnancy without notice to or the consent of her husband.”¹¹ Moreover, the Supreme “Court has noted the role that sex-based classifications have played in denying women equal opportunity, perpetuating inferiority, and reinforcing stereotypes.”¹² Because the differences between men and women are negligible, in short, there is no need to restrict marriage to man and woman, fatherhood to men or motherhood to women. Even though McClain acknowledges a need for *two* parents, who can cope more effectively than single parents with the economic and practical hardships of daily life, she believes that *any* two parents will do—including two mothers or two fathers. From this, it follows that one of the two women in each couple can be an adequate father (or at least father-figure) and one of the two men an adequate mother (or at least mother-figure). McClain does take equality (in the sense of sameness) to its logical conclusion and thus serves the needs of adults. But does she serve those of children, too?

RE-GENDERING PARENTHOOD

On the surface, nothing could be clearer than the distinction between de-gendering and re-gendering. The former refers to *eliminating* gender as a cultural system, the latter to *revising* it. This means that re-gendering is incompatible with a conservative approach, which would involve *restoring* an earlier gender system. If the earlier gender system was so good, after all, why revise it? Why not start all over again from scratch? Re-gendering is nonetheless incompatible also with egalitarian feminism, which sees gender itself as inherently oppressive for women since it uses culture to elaborate on natural differences between the sexes. Gender relies on culture to elaborate on natural differences between the sexes and thus, according to feminists, to institutionalize a hierarchy in which men dominate women. From the perspective of egalitarian feminism, gender in any form is the ultimate problem. And yet some feminists use the *rhetoric* of equality to undermine the possibility of equality. They do so in ways that would allow women to dominate men, of course, not the reverse. Despite ostensible reliance on the notion of equality, therefore, some feminists truly rely on the notion of hierarchy. Far from being egalitarian feminists, in short, they are what we call *ideological* feminists.

With this in mind, consider the work of Susan Appleton.¹³ She wants to change the legal redefinition of parenthood in order to support gay parents (and therefore to promote gay marriage). But her proposal¹⁴ amounts to support primarily for *gay female* parents. Instead of calling for governments to overturn legal theories, however, she calls merely for a reinterpretation of one: the presumption of paternity. Relying on precedent makes her conservative, legally, but in the interest of what amounts to social revolution.

It is not always easy to establish paternity, so most societies have used culture to define it for practical purposes. Our society presumed, by law, that the man who lived



with a woman was the father of her children. He usually was the genetic father, but not always. The courts did not worry about that distinction, though, because they had to ensure that someone provided resources for the children. But many feminists have challenged all that. They argue that the law has always defined fatherhood in “social” terms, not genetic ones; it is nothing more than a widespread “social construction.” They draw the conclusion that fathers are unnecessary; anyone, after all, could perform the jobs that society has assigned to fathers. But this is a non sequitur. If fathers are unnecessary, after all, why have most societies found it necessary to “construct” fatherhood?

The presumption of paternity is a legal fiction, Appleton argues, because the man who lives with a woman might or might not be the genetic father of her children; the law does not presume, she adds, that a woman living with a man is the mother of his children¹⁵ (although even that would be a legal fiction, we suggest, because she might or might not be the genetic mother). Remember that any legal presumption is always of crucial importance, because it assigns the *burden of proof* to one side. If the genetic father has a presumptive right to joint custody, for instance, then he does not need to prove himself fit for custody. On the contrary, his adversary must try to prove that he is unfit.

One of Appleton’s explicit goals is a default mechanism that would confer parental rights automatically on both parties of gay couples. The new presumption of parenthood, extended from fatherhood, would then include a father’s male partner or even mother’s female partner as the legal “father.” You could say that she uses a conservative means (extending an established legal principle) in order to attain a radical end (supporting gay couples). Ironically, she does so in the name of equality, making gay parents equal to straight ones.

The advent of genetic testing for paternity, even more than the older presumption of paternity, threatens Appleton’s position. This is because her other explicit goal is to avoid a genetic definition of parenthood, one that currently allows genetic fathers to claim parental rights. She does so not only by extending the legal presumption of paternity, however, but also by replacing the genetic definition of parenthood with several functional ones: gestational mother, social mother, social father and so on. Moreover, she replaces the presumption of paternity with a rule that would allow “no space for rebuttal by genetic evidence.”¹⁶ DNA testing would not help gay people, she argues, because female couples must rely on the sperm of outsiders and male couples on both the eggs and gestational services of outsiders.

According to Appleton, the legal definition of mother “persistently has emphasized biological ties.”¹⁷ But the story is more complicated, we think, than that. For one thing, people knew nothing of genetics until very recently. Parenting has always had cultural dimensions, moreover, because the ability to produce culture is a genetically programmed part of human nature. The advent of genetic testing has made many feminists reject a genetic definition of parenthood, because that would establish equal claims for genetic mothers *and genetic fathers*. And because it would not help *gay couples* (who must rely on reproductive technologies, some of which preclude genetic links), Appleton agrees.¹⁸ Besides, testing would eliminate any justification, not only

for the presumption of paternity (a legal fiction that would be unnecessary) but also for Appleton's extension of it. In other words, it would privilege "genetic" fathers over social mothers, mere egg donors over gestational mothers, and so on. Equality talk notwithstanding, in short, Appleton would allow some claimants to take priority over others. Of primary interest to us here is what all of this means specifically for fathers, children and equality.

Implicit in Appleton's new hierarchy would be an inherent contradiction. On the one hand, it would imply the supremacy of gestational mothers over genetic ones and encourage female couples to use reproductive technologies such as artificial insemination; that is, to rely heavily on *culture*. On the other hand, ironically, it would reaffirm the traditional link between women and nature and thus the supremacy of *nature*. After all, gestation is both functional (because gestational mothers might or might not be genetic mothers) and genetic (because only women have wombs). Women as a group would win either way, and men as a group would lose either way. This point of view would discourage the law from recognizing genetic fatherhood, which would allow both straight men and gay sperm donors a reasonable claim to custody of their genetic children (or at least visitation and other parental rights) and thus prevent reproductive autonomy for women.

Appleton acknowledges that not everyone would like the new hierarchy.¹⁹ She acknowledges that gay men in particular would lose out due to (what we consider) the inherent inequality of her proposal; surrogate mothers would almost always trump them in court. Ironically, the interests of gay men (let alone their children) would be much safer in a system that assumes the primacy of genetic ties, because Appleton's proposal rewards only gestation. And gestation is an exclusively female ability (although that could change with the advent of an artificial womb).

Appleton does not mention that some gay women, too, could end up as superfluous social parents. This would happen if legislators were to recognize the supremacy of gestational mothers over social parents. Worse, we would add, these gay women could still end up (as so many divorced fathers have) with unfair financial obligations for children. Gay women who know how the courts often exploit straight fathers in custody and child-support cases,²⁰ we suggest, might well have second thoughts about relationships with gestational mothers.

According to Appleton's functional definition of parenthood, neither the genetic nor the custodial claims of men could ever trump those of women in court. This playing field would never be level enough for men to function as the equals of women, in other words, no matter how much they contribute to work in the home. Moreover, this definition would give surrogate mothers primacy over their clients, including gay men, in cases of legal conflict. This takes us back to the 1980s, when feminists had much to say about the evils of surrogacy. They saw it as a patriarchal institution that exploited and controlled women's bodies.²¹

THE NEED OF CHILDREN FOR FATHERS

In theory, children should be the most important topic by far in almost any discus-



sion of marriage, divorce or custody. In practice, unfortunately, that is not always the case; very often, the needs of adults override those of children and thus turn children into bystanders. A humongous elephant stands silently and sadly, therefore, in this metaphorical room—that is, the public square. And one need of children, we suggest, is for fathers.

This does not mean that fathers respond to this need purely or even primarily on the basis of instinct. Hormonal changes do affect fathers in some ways,²² to be sure, and genetic links with children do make a difference for fathers.²³ But we agree with anthropologist Meyer Fortes, who argues that “institutionalized fatherhood, unlike motherhood, comes into being not by virtue of a biological ... event” but as “a creation of society.”²⁴ From this, we do not conclude that paternal childrearing is less important than maternal childrearing. We conclude only that it requires a major *cultural effort* in addition to natural mechanisms such as the low levels of testosterone in new fathers.²⁵

Unwittingly, at least in some cases, many feminist approaches to the family undermine the notion that children need fathers. Appleton ignores that need, for instance, and therefore the moral or legal right²⁶ of children to have fathers.²⁷ Feminists who adopt that point of view, therefore, exploit the family as a vehicle for promoting either the personal autonomy or the collective identity of women. And yet some of them find it convenient to stay well within current legal norms by looking for precedents.

So, why do we argue that children need fathers? Many studies indicate that they need two parents,²⁸ which is bad news for single mothers. But what if children need both mothers *and fathers*? That would be bad news for both single mothers and gay couples. The need for two parents is obvious; no one would seriously argue that one parent alone is as effective as two. The need for parents of both sexes is less obvious, because it could be the result of cultural transmission, teaching women to do some things and men to do other things, instead of genetic transmission. If so, then two mothers or two fathers would do just as well as one of each. To know for sure, we will have to wait twenty or thirty years for the results of longitudinal studies on the children of gay couples. And these would have to be scholarly ones, not those that study small or self-selected samples.²⁹ Meanwhile, we suggest that children have at least two reasons for needing both mothers and fathers. Because no one questions the need for mothers, though, we emphasize here the need for fathers.

At their best, mothers give children *unconditional love*.³⁰ Children who fail to heed maternal rules or guidelines face disciplinary measures, to be sure, but not the withdrawal of maternal love. Mothers have additional functions, but this is their most distinctive one in families with both mothers and fathers. This is why young children usually run to their mothers, not their fathers, for comfort in times of emotional or even physical distress. No matter how many mistakes they make, most children can feel secure in the knowledge that their mothers will forgive and continue to cherish them. At their best, fathers expect children to *earn respect* by facing challenges and acting honorably whether at home or in the risky and dangerous world beyond home. Children who fail to earn paternal respect do not necessarily face the withdrawal of paternal love, but they do face paternal disappointment, which leads to lack of self-

confidence or even self-esteem.

Fathers do not have an easy job, because they must accept an inherent psychological contradiction: the urge to shower children with affection versus the need to prod them with expectations. In other words, they must navigate the narrow but treacherous stream that separates two fundamentally opposing attitudes toward their children: distance (which is sometimes necessary) and indifference (which is not). The most important psychological task of fathers as such is not to provide what children want immediately, therefore, but what they need in the long run. Not surprisingly, many children are more ambivalent about their fathers than about their mothers. Even though children enjoy paternal rewards for achievements, after all, they do not enjoy paternal disappointment or even paternal disapproval for failures. Very often, in fact, fathers must do their jobs precisely in the context of *conflict* with their children. Adolescents characteristically experience *alienation* from their parents, especially boys from their fathers. And some degree of alienation is a good thing, not a bad thing. Otherwise, why would adolescents feel the powerful urge to leave home and become adults in the larger world?

Fathers do not necessarily have even an attractive job. At first, after all, most fathers must do without the immediate, direct and profound emotional gratification that mothers expect from their infants and young children. Many fathers are emotionally close to their children, but they must still wait many years before their children demonstrate effective socialization (and, in some cases, before their children demonstrate even gratitude). Many men who grew up before the 1980s remember their fathers as either unwilling or unable to express affection, which might or might not have been due to indifference. They felt close to their mothers but not their fathers. After all, children explore relationships primarily through emotion. They respond happily to anyone who gratifies them emotionally and angrily to anyone who frustrates them emotionally. Many men who have grown up more recently, on the other hand, might well remember their fathers as *too* willing to express agreement or support at the cost of not challenging them to achieve goals and become independent. These conflicting attitudes often place fathers in no-win situations.

To make fatherhood more attractive than it would otherwise be, many cultures have supported or even promoted it with joyful public rituals that emphasize the communal importance of fathers. These express the ties that bind children to their fathers and grandfathers. Consider the religious Jewish father, for instance, who stands proudly in the synagogue with his *tallit* (prayer shawl) wrapped around both himself and his young son or blesses the Torah before his adolescent son reads from it for the first time (thus becoming a *bar mitzvah*). In Orthodox synagogues, moreover, only married men (fathers or fathers-to-be) may wear the *tallit*. Here is another example. Hindu men must have sons to perform the funeral ritual, *shraddha*, for them. This enables men to reach heaven and therefore indirectly reinforces the importance of fatherhood. Modern societies do nothing of the kind. On the contrary, they have eliminated not only initiation rituals in general but also gendered rituals in particular. Many religious communities have eliminated the distinctive emphasis on father-son relationships.³¹ Even Father's Day has become controversial in some circles. In 2008, for instance, some



schools in Scotland forbade children to make Father's Day cards. The ostensible reason was not all children have fathers. The schools wanted "to avoid causing embarrassment to classmates who live with single mothers and lesbian couples."³² Never mind that only *seven percent* of the children in Scotland live with single mothers. Not one school, however, forbade children to make Mother's Day cards.

No parent can do both jobs, providing both unconditional love and earned respect, without giving his or her children deeply confusing mixed messages. But could two parents of the same sex not perform these conflicting tasks? Cinematic fantasies such as *The Kids Are All Right* say that they can. We do not yet know if mothers on the whole are innately less able than fathers to provide children with earned respect—or if fathers on the whole are innately less able than mothers to give unconditional love. But we do know that most mothers, perhaps even most social mothers, are unlikely to withhold unconditional love for their children in the interest of offering them earned respect instead. That might be due to innate tendencies, or it might be due to countless centuries of cultural conditioning. Either way, changing women in this way would probably require a transformation of colossal magnitude, one that goes far beyond anything that feminists have achieved so far even with massive support from both public and private agencies. After all, this might require the use of culture to work against nature—that is, against the urge to hold, fondle or "nurture" infants. And using culture to work *against* nature is always at least somewhat harder than using it to work *with* nature. We are not there yet, in any case, not nearly there. No schools or social service agencies offer courses on fatherhood for mothers. And even if they did, it would take at least a generation of scholarly testing to find out how effective they are. In the meantime, *too* many fathers and mothers perform one task much more effectively than the other. This state of affairs does not justify our experimenting on children by denying them fathers in order to satisfy the desires of adults.

But children need both mothers and fathers for an additional reason. Although it seems counter-intuitive in an age that accepts the fragmentation of institutions such as marriage and the family into countless "functions" or other legal categories, the fact remains that we all have bodies. And these, a few anatomical anomalies aside, are either male or female. Unless parents take the extremist position that nature is utterly irrelevant and that we can use culture to do anything at all (a position that some feminists promote in order to change whatever they dislike about society and others abhor as a dualistic "male" fantasy that oppresses women), they must help their children feel comfortable with male or female bodies. At no time is this task more urgent than during adolescence, when both physiological changes and new psychological urges require attention.

Feminists have long complained with good reason that men—male physicians, psychologists, philosophers, theologians and so on—have tried to tell women what womanhood is or should be all about. These days, men could complain with equally good reason that women—ideologically feminist academics and activists—are trying to tell men what manhood is or should be all about. This would be a major problem even if these notions of womanhood or manhood were all benign. But they are not. The fact is that mothers are innately more qualified than fathers to teach their daughters specif-

ically about being female. Similarly, fathers are innately more qualified than mothers to teach their sons specifically about being male. On the other hand, neither girls nor boys live in a one-sex world. Mothers can and must teach their sons about the needs and expectations of women. Similarly, fathers can and must teach their daughters about the needs and expectations of men. In other words, knowledge from within (what anthropologists call “emic” knowledge) is no less important than knowledge from without (what anthropologists call “etic” knowledge).

SOME LEGAL MEASURES TO SUPPORT FATHERS

Because children need fathers, we must rely on cultural measures—including those enshrined in laws—that support fathers. And these, ideally, rely on the genetic link between a father and his children. As Margaret Somerville has pointed out,³³ many adult children of single parents and adoptive parents are already making considerable efforts to locate or even merely to learn about one or both of their genetic parents. And only the most cynical observers would argue that their motivation is purely or even primarily the possibility of financial gain. Some of these adult children think primarily about the medical implications of their genetic identities. One would be inherited disease, which might make it risky for them to have children of their own. Most think primarily about the psychological or cultural implications of their genetic identities: links with both ancestors (their ethnicity, history or religion) and living relatives (parents, siblings, cousins, grandparents, aunts and uncles). This might sound irrational to some people, but evidence reveals it as a deeply rooted need.³⁴ Otherwise, why would so many adopted children search for their genetic parents? Finally, we have evidence that genetic fathers, who live with their genetic children, are more likely to invest heavily in providing for and protecting them than the children of other men.³⁵ This is not a slur on adoptive or other social fathers who consciously choose to invest heavily in the children of other men. Suspicion of adultery does not enter the picture.

If the family is a schoolroom that promotes social equality, as Linda McClain says,³⁶ then sheer logic would make the legal presumption of equality between mothers and fathers not merely desirable but necessary. Consider custody. This is a hotly “contested site” for men and women, even though gender-neutral legislation hides not only the fact that courts usually give custody to mothers³⁷ but also the fact that many feminists advocate that solution despite their egalitarian rhetoric.

One would think that joint custody is the most obviously egalitarian solution from the perspective of parents (and also the most obviously helpful from the perspective of children), and yet many feminists reject that solution. Given the legal need for gender neutrality, however, feminists do not argue overtly for maternal custody as a general principle. Instead, they do so for a seemingly practical reason. Mothers make greater contributions than fathers, they say, to the care of their children. To support that premise, the American Law Institute makes a careful (but dubious) distinction between “caretaking” functions and “parenting” functions.³⁸ Most people would associate the former functions (emotional, moral, cognitive, artistic or other functions that involve close personal interaction) with loving mothers and the latter functions (financial and



other functions that do not involve close personal interaction) with dutiful fathers. Courts usually assume that mothers are better at the former and fathers better at the latter. And the courts are probably correct from a statistical point of view. American mothers do contribute more time and effort than fathers to caretaking in this sense (at least partly, ironically, because of their “patriarchal” cultural conditioning). But the courts are not necessarily correct from an *evaluative* point of view.

This brings up a linguistic problem: the conflation of “caring” (but not “parenting”) with “love.” Many people assume that most mothers *love* their children more than most fathers do, because most mothers are more emotionally demonstrative than most fathers, and therefore that most children *love* their mothers more than their fathers. From this, the courts conclude that most children *need* their mothers more than their fathers. Ergo, they give custody to mothers instead of fathers *despite the gender-neutral language of legislation*. This is how the courts can simultaneously satisfy both egalitarian feminists (who might or might not insist on legal preference for mothers) and ideological ones (who usually do insist on legal preference for mothers). In other words, this is how the courts can maintain the rhetoric of equality (referring to explicitly gender-neutral legal texts) but nonetheless promote inequality (referring to implicitly gendered interpretations so that they can award custody most often to legal “caretakers” instead of legal “parents”).

Mothers do contribute more than fathers to the “nurturing” of infants, because only women can give birth and lactate. But that in itself does not necessarily make mothers better than fathers at all aspects of childrearing, we suggest, because infants and young children have needs that neither mothers nor fathers *alone* can satisfy. It does not make mothers better sorts of parents than fathers at all *stages* of childrearing, moreover, because adolescents and older children have needs that fathers can provide most easily.³⁹ We suggest, in short, that mothers and fathers are not interchangeable. Children need both, not one or the other—and not two of one. This should lead to the presumption of joint parenting in custody cases.

There was a time when the presumption of paternity rested by default on a legal fiction. But that was then, and this is now. With access to genetic facts, it would be folly to establish laws that rely instead on legal fictions, especially ones that support inequality and thus bring the entire legal system into disrepute. We suggest that courts rely not merely on the presumption of paternity but on the results of mandatory genetic testing.⁴⁰ On the other hand, we recognize the need for an exception in the best interests of some children. With all this in mind, consider the following plans for establishing paternity.

Plan A, the *default setting*, as it were, would require genetic testing of both the infant and the mother’s husband or boyfriend.⁴¹ If he is the genetic father, then this would be the ideal scenario. It would give the genetic father a presumptive⁴² right to joint custody in case of divorce (barring verifiable evidence of abuse) but also the economic and other responsibilities of fatherhood until the child’s coming of age. Otherwise, the law would proceed to one of the following *contingency* plans.

Plan B would come into effect if the mother's male partner is *not* the genetic father. If her partner chooses to be the social and legal father, he would have to marry the mother and *declare his paternal intentions* in a legal document. This would give him the presumptive right to joint custody in case of divorce (barring verifiable evidence of abuse) but also the economic and other responsibilities of fatherhood until the child's coming of age.

Plan C would come into effect if both the genetic father *and* the social father want to be the legal father. The social father, already in the home and bonding with the child, would *declare his paternal intentions* in a legal document and thus become the legal father. In this case, the social father would trump the genetic father.

Plan D would apply to a situation that is very far from the ideal, coming into effect if the mother's male partner is *not* the genetic father and does *not want* to be the legal father because it would impose a considerable financial burden on him. To stay on as the social father by default, he would become the legal father as well. If he were to leave, of course, then the genetic father would become the legal father. The court should encourage the genetic father, possibly by establishing visitation rights, to become the social as well as the legal father.

THE NEED OF MEN FOR CHILDREN

Children need fathers, but men need fatherhood. Many people have written about masculine identity as a problem, and most of them—Michael Kimmel is an obvious example—have tried to explain this “problem” as the result of an atavistic sense of “entitlement.” Like their “patriarchal” forefathers for countless generations, men feel entitled to higher status and more power than women, according to Kimmel in *Guyland*.⁴³ But men can no longer expect these things in the modern world. Ergo, he claims, they express their frustration by seeking revenge against society in general and women in particular. We suggest a modified version of that explanation. Some men do feel entitled to higher status or more power than women, lamentably, but most men feel entitled simply to an acceptable *identity*. And an acceptable identity, unlike unearned privilege, is a legitimate and universal human need. Elsewhere, we argued that a *healthy* identity, whether personal or collective, is attainable only by those who can make at least one contribution to the larger society that is distinctive, necessary and publicly valued.⁴⁴

The problem begins with distinctiveness. You do not need elaborate psychoanalytical theories, let alone conservative theological traditions, to know that there is at least one thing that women can do but men cannot do: give birth and therefore ensure communal continuity. Until very recently in human history, though, the asymmetry did not matter. Whether due to nature or culture (or both), after all, most men were well suited to make their own distinctive contributions as providers, protectors and pro-



genitors. In our time, the first two are now anachronistic. (And the second, given the need to teach boys the psychological skills that they would require in war and withhold the contrasting psychological skills that they would require for intimacy, is potentially dangerous in any case.) Women are increasingly able to provide resources on their own (sometimes with help from the state). Women are increasingly able to protect themselves (sometimes with help from the state). And women are increasingly *claiming* that they are able to become both mothers and, in effect, fathers. If they could demonstrate that children do not need fathers, that men either do not or should not have any stake in producing new generations and therefore in the communal future, then men would be left without even one legitimate source for a healthy collective identity. The consequence of social engineering with that scenario in mind, pervasive alienation among men, would be catastrophic not only for men but also for children and thus for society as a whole.

THE NEED OF DEMOCRATIC SOCIETIES FOR EQUALITY

This brings us to sexual equality. Almost all people in modern societies, including most men, now believe that women can do—and should do—everything that men can do. This belief expresses an egalitarian ideal, a noble ideal. It is also a somewhat naïve ideal, though, if you assume that equality means sameness, because men and women are not quite interchangeable.

Some of those who adopt the “diversity” model of family life, at any rate, will worry about our emphasis on fathers and therefore a “patriarchal” subtext. But our emphasis is due mainly to the fact that so many other scholars have either trivialized or ignored fathers—or, to put it another way, the need of children for fathers. We consider equality, including sexual equality, a fundamental principle of every democratic society.

No one in America today is going to argue explicitly for any form of inequality. To see how seriously anyone takes equality, therefore, we must examine what they argue *implicitly*. Does what they espouse really add up to equality? Or does it add up to some new form of inequality? In the case of feminists who write about the family, we must examine not only their definitions of marriage and parenting in an egalitarian and presumably genderless society but also how these definitions affect (or change after) divorce. *Cui bono?* Who benefits most? Who gets the best deal: children, fathers or mothers?

Consider Appleton’s proposal more closely with this in mind. As we say, it would extend the legal presumption of paternity to include the female partners of mothers. This would eliminate one form of inequality, to be sure, but replace it with another. In theory, gay couples would have the same status as opposite-sex couples. In fact, though, not all gay couples would be equals. Female couples would benefit from her proposal, because the law would recognize both women immediately as legal parents (one genetic mother and one social mother). Male couples would lose, on the other hand, because the law would still give priority to surrogate mothers over social fathers.

Appleton’s definition of parenthood would institutionalize a hierarchy that places not only gestational mothers over genetic or social mothers (because gestation puts

the “labor” in labor) and women over men (because neither social nor genetic fathers would ever win custody unless gestational mothers were obviously unfit for parenting)⁴⁵, but also gay women over gay men (because neither gay genetic fathers nor gay social fathers would win custody unless gestational mothers were obviously unfit for parenting).

To conclude, we propose the following *moral* presumptions, which every society should translate into legal ones:

1. Every society, community, or family has a vested interest in continuity from one generation to the next and thus in reproduction.⁴⁶
2. Every child needs the intimate and enduring presence of a same-sex parent (to place distinctive physical and developmental needs in a larger context of meaning and to provide convincing guidance) *along with* an opposite-sex parent (to establish the patterns of relations between the sexes and thus prepare them for both social life in general and reproduction in particular).
3. To establish basic security for their children, parents must provide for their emotional, intellectual, social, physical and financial needs.
4. A democratic society should promote equality between women and men (including mothers and fathers), not by establishing utopian standards that require rigorous and intrusive state control but by accounting legally for sexual asymmetries that leave men and women “differently situated” (and doing so in ways that maximize both their personal liberty and their moral responsibility as parents).
5. To establish healthy identities, both boys and girls must learn that they can make at least one *distinctive, necessary, and publicly valued contribution to society specifically as either men or women*. And in the case of boys, as we have written elsewhere,⁴⁷ that would now be their contributions as fathers.
6. Genetic ties, usually being stronger and more enduring than cultural ones, should be the default setting that defines parenthood in most cases. This is particularly important now that divorce and social fragmentation have become so pervasive.⁴⁸

Notes

¹ *The Kids Are All Right* (Lisa Cholodenko, 2010).

² We discuss portrayals of fathers throughout *Spreading Misandry: The Teaching of Contempt for Men in Popular Culture* (Montreal: McGill-Queen’s University Press, 2001). We discuss journalistic and legal attitudes toward fathers in *Legalizing Misandry: From Public Shame to Systemic Discrimination against Men* (Montreal: McGill-Queen’s University Press, 2006) 3-20,



125-156, 415-438, and in chapter 4 of *Transcending Misandry: From Feminist Ideology to Intersexual Dialogue* (forthcoming from McGill-Queen's University Press).

³The Feminist International Network of Resistance to Reproductive and Genetic Engineering (FINRRAGE) is more than a network; it is a movement. Since the 1980s, members such as Gena Corea, Jalna Hanmer, Pat Spallone, Rita Arditti, Renate D. Klein, Janice G. Raymond, Robyn Rowland, Maria Miewes, Christine Crowe, Paula Bradish, Shelley Minden, Linda Bullard, Susan Ince and Sultan Kamal have contributed to anthologies on reproductive technologies. They have challenged new scientific developments and policy positions, often viewing these as attempts by men to control women's bodies or even to eliminate women themselves (*Made to Order: The Myth of Reproductive and Genetic Progress*, ed. Patricia Spallone and Deborah Lynn Steinberg [Oxford: Pergamon Press, 1987], 6). "We want to maintain the integrity and embodiment of women's procreativity. Externalization of conception and gestation facilitates manipulation," ("Resolution from the FINRRAGE Conference, 3-8 July 1985, Vallingbe, Sweden," in Spallone and Steinberg 2-30). Although it originated in Western feminism, this movement has increasingly shifted its focus to the rights of women in Asia, Africa and Latin America. Here are some passages from the network's website (finrrage.org).

As a network, FINRRAGE does not have formal membership. Instead, the network provides links between individual women, as well as different kinds of local, national or international women's organisations who share common concerns and viewpoints and wish to participate in an ongoing process of analysis, discussion and political activities. FINRRAGE activists work within their countries in choosing priorities, both regarding issues and activities which are suited to their specific situation. This may involve critical research and investigation, information to the public and the press in the form of seminars, publications, interviews, lobbying, outreach to interested groups and individuals, cultural and political forms of expressing resistance and the establishment of alternatives for women (e.g. counselling or self-help groups).

Until 1997 the links between FINRRAGE associates working in different countries were maintained by the FINRRAGE international coordinating group and the national contacts. The international coordinating group functioned as a clearinghouse to provide linkages, to collect and distribute information, and to coordinate and facilitate the activities of the national contacts and other network women internationally.

Since 1997 national contacts carry on this work on a national level. There are no elected representatives who formulate FINRRAGE policy but common consensus positions decided upon by all participants at FINRRAGE conferences.

⁴ Elsewhere, we define our use of the word "ideology" very carefully in connection with worldviews on both the political right (such as nationalism or racism) and the left (such as Marxism). An ideology is any way of thinking that involves all or most of the following characteristic features: dualism (believing that "they" are inherently evil); essentialism (believing that "we" are inherently good); hierarchy (believing that "we" are superior to "them"); collectivism (believing that group needs take priority over the needs not only of individuals but also, at least during the struggle, of society as a whole); utopianism (believing that the emergence of an ideal society requires the elimination of those who oppose it); selective cynicism (suspecting only "their" motives); revolutionism (overthrowing the current order as distinct from merely trying to re-

form it); consequentialism (believing that ends can justify means); and quasi-religiosity (conferring meaning, purpose, community and especially identity on believers). To the extent that any form of feminism has absorbed these characteristic features, therefore, we would classify it as ideological feminism as distinct from egalitarian feminism. See Paul Nathanson and Katherine K. Young, *Spreading Misandry: The Teaching of Contempt for Men in Popular Culture* (Montreal: McGill-Queen's University Press, 2001), 200-233.

⁵ Ironically, advocates of egalitarian parenting exemplify both social constructionism and deconstructionism. Academics like to deconstruct gender, for example, into discrete cultural "discourses" and then declare that gender amounts to nothing more than one "social construction" among many other real or possible ones (albeit one that men "constructed" to serve their own interests and therefore to oppress women). In that case, gender is irrelevant to parenting.

⁶ In *Why We Lost the ERA* (Chicago: University of Chicago Press, 1986), Jane Mansbridge makes it clear that the possibility of drafting women into the armed forces and the possibility of using them in combat, was a *major* factor in defeating the Equal Rights Amendment. "Two things happened between 1970, when the major ERA organizations first articulated formal positions on women's role in the military, and 1982, when the ERA went down to defeat. First, the idea that the ERA would require not just drafting qualified women but sending them into combat had become a powerful substantive objection to the Amendment. Second, the organizations campaigning for the ERA had come to insist more and more strongly that the Amendment would do exactly this" (67). To their credit, most feminist leaders took a principled position. For several reasons, they opposed any exemptions for women.

In the first place, any exemptions for women would have reinforced the belief that women were inherently incompetent. Even worse, it would have reinforced the belief that women need protection by men. Then, too, exemptions would have compromised their belief in equality. If women expected equal rights as citizens, they should also expect equal responsibilities. But these women were motivated by moral principles, not only legal or political ones. Most of them being opposed to the military in general, let alone the war in Vietnam and registration for the peacetime draft, they understood that brutalizing young men was just as wrong as brutalizing young women. This is reflected in a position paper written by the National Organization of Women: "War is senseless. Neither the lives of young men nor young women should be wasted. But if we cannot stop the killing, we know we cannot choose between our sons and daughters. The choice robs women as well as men. In the long and short run, it injures us all" (National Organization for Women, "Position Paper on the Registration and Drafting of Women in 1980"; quoted in Mansbridge 74).

⁷ Linda McClain, *The Place of Families: Fostering Capacity, Equality, and Responsibility* (Cambridge: Harvard University Press, 2006), 5.

⁸ Linda, McClain, "God's Created Order: Gender Complementarity, and the Federal Marriage Amendment," *BYU Journal of Public Law*, 20 (2006): 339.

⁹ We disagree with McClain about love in marriage. That goes back at least to the biblical period. Jacob loved Rachel so much, for instance, that he spent fourteen years working for her father in order to marry her (marrying Leah after the first seven years, even though he and Leah did not love each other as much as he and Rachel did). If that is not "voluntary marriage," what is? And biblical texts provide many other examples. The troubadours of medieval Europe glorified love, too, though not in the context of marriage; "courtly love" referred to a bond both



erotic and spiritual between knights and usually unattainable ladies.

¹⁰ McClain, "God's Created Order," 341.

¹¹ McClain, "God's Created Order," 340.

¹² McClain, "God's Created Order," 340.

¹³ Susan Frelich Appleton is the Lemma Barkeloo and Phoebe Couzins Professor Law at Washington University School of Law in St. Louis.

¹⁴ Susan Frelich Appleton, "Presuming Women: Revisiting the Presumption of Legitimacy in the Same-Sex Couples Era," *Boston University Law Review*, 86 (2006): 227-294.

¹⁵ Appleton 237. She argues that it was wrong to apply this presumption only to men, so how could it be right to apply the same presumption even more widely? Two wrongs do not make a right. This would be revenge, due to an inherent flaw, not justice.

¹⁶ Appleton 291. If "this approach leads to the conclusion that genetic evidence is irrelevant to the parentage of lesbian couples," Appleton adds, "then the 'parity goal' indicates that the same principle should apply to traditional couples, making genetic evidence irrelevant for them as well" (291).

¹⁷ Appleton 238.

¹⁸ Appleton 269-284.

¹⁹ Appleton 292, 294.

²⁰ Nathanson and Young, *Legalizing Misandry*, 125-156; 415-438.

²¹ Surrogacy remains legal in the United States but not everywhere else. For the arguments against surrogacy, see Gena Corea, "The Reproductive Brothel," in *Man-Made Women: How New Reproductive Technologies Affect Women* (London: Hutchinson, 1985).

²² See Louann Brizendine, *The Male Brain* (New York: Broadway Books, 2010).

²³ For approximately twenty years, anthropologists rejected the whole idea of kinship as an artifact of Western cultural imperialism. This was due entirely to the work of David Schneider. In *A Critique of the Study of Kinship* (Ann Arbor: University of Michigan Press, 1984), he argued that not every society even acknowledges what Westerners think of as kinship. Genetic ties between fathers and their children are unimportant, from his point of view, even though some societies insist on supposing that they are important. This point of view supported the cultural relativism that had long been popular among anthropologists. But like academic fashions in every field, the new and improved anthropology is itself open to question. In "Primeval Kinship: How Pair Bonding Gave Birth to Human Society" (*Evolutionary Psychology* 6.4 [2008]: 557-562), Bernard Chapais threw down the gauntlet by taking seriously the work of primatologists and evolutionary psychologists. Some things, he argued, really are universal among humans. Of interest here is his claim that kinship is not merely a cultural "construct." This means that ignoring the ties that bind fathers and their children, ties that emerge not only from culture but also from nature, would be unwise.

²⁴ Meyer Fortes, *Rules and the Emergence of Society* (London: Royal Anthropological Institute of Great Britain and Ireland, 1983), 20.

²⁵ Scientists have now observed that fatherhood accompanies a significant hormonal change; the level of testosterone falls dramatically, making fathers much more likely than they would have been to stick around and participate actively in family life. "The real take-home message," says Peter Ellison, who teaches evolutionary biology at Harvard, is that "male parental care is important. It's important enough that it's actually shaped the physiology of

men ... My hope would be that this kind of research has an impact on the American male. It would make them realize that we're meant to be active fathers and participate in the care of our offspring" (Peter Ellison; quoted in Pam Belluck, "In Study, Fatherhood Leads to Drop in Testosterone," *New York Times*, 12 September 2011, A-1). The study, conducted by Lee Gettler and Christopher Kuzawa at Northwestern University, found that high levels of testosterone help men find mates while low levels help them stay with those mates and their children. "A dad with lower testosterone is maybe a little more sensitive to cues from his child," says Peter Gray, an anthropologist at the University of Nevada, "and maybe he's a little less sensitive to cues from a woman he meets at a restaurant" (Belluck A-1).

²⁶ The United Nations, however, has defined the rights of children. According to article 7 of its Convention on the Rights of the Child, the "child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, *the right to know and be cared for by his or her parents*" (our emphasis). By not specifying any parental type, this legal text clearly refers to the most obvious type: biological parents of opposite sexes. By adding "as far as possible," it alludes to the fact that some children lack biological parents because of death or abandonment.

²⁷ By citing cases that repeatedly link the "best interests of the child" and the government's interest in saving tax dollars, not with other rights of the child (such as an identity that includes knowledge of genetic parents, siblings and other relatives), Appleton supports her case for extending the presumption of paternity to the presumption of parenthood for lesbian partners (Appleton 247).

²⁸ Many studies of children from broken families have come out over the past twenty years. Here are some of the most interesting ones: Paul R. Amato, "The Consequences of Divorce for Adults and Children," *Journal of Marriage and the Family* 62.4 (2000): 1269ff.; E. Mavis Hetherington and John Kelly, *For Better or for Worse; Divorce Reconsidered* (New York: Norton, 2002); and Judith S. Wallerstein and others, *The Unexpected Legacy of Divorce: A 25 Year Landmark Study* (New York: Hyperion, 2000).

²⁹ One meta-study evaluated 49 empirical studies on same-sex parenting focussed on how each study formulates its hypothesis, designs its project, controls for extraneous matters, measures bias and reliability, composes its sample, compiles statistics and deals with the problem of false negatives. The researchers found more than a few major problems, including: unclear hypotheses; inadequately designed projects; self-constructed, unreliable and therefore invalid measurements; small and non-random samples; missing or inadequate statistical analysis. At least one "fatal research flaw" invalidates each of these studies (R. Lerner and A.K. Nagai, *No Basis: What the Studies Don't Tell Us about Same-Sex Parenting* (Washington, D.C., Marriage Law Project, 2001).

³⁰ Nature itself prompts mothers to interact with their children, first in connection with gestation and then in connection with lactation. And culture strongly reinforces nature long after mothers wean their children. Fathers, of course, neither gestate nor lactate. This allows them to care for their children in the broader perspective of long-term needs, one of which is the need of every child to leave the protected world of home and enter the riskier world beyond it. Most cultures reinforce their efforts by offering status to fathers per se.

³¹ Boys have a much deeper need than girls for cultural mechanisms to mark coming of age. (See Paul Nathanson and Katherine K. Young, "Coming of Age as a Villain: What Every Boy



Needs to Know in a Misandric World,” *Thymos: Journal of Boyhood Studies*, 3.2 (Fall 2009): 155-177.) Even so, many Jewish communities, including some Orthodox ones, now celebrate *bat-mitzvot* of girls, a functional equivalent of the coming-of-age rite for boys. In many congregations, for instance, both girls and boys give speeches in which they interpret passages from scripture. Whether girls read those passages from the Torah, as boys do, is another matter. In any case, coming of age for girls, no less than for boys, has become nothing more for many Jews than the excuse for a lavish party. As for Hindus, some communities celebrate coming-of-age for both boys and girls at the beginning of elementary school.

³² Kathleen Nutt, “Scottish Schools Ban Father’s Day Cards,” *Sunday Times*, 22 June 2008.

³³ Margaret Somerville, “Children’s Human Rights and Unlinking Child-Parent Biological Bonds with Adoption, Same-Sex Marriage and new Reproductive Technologies,” *Journal of Family Studies*, 13.2 (November 2007): 182-185.

³⁴ Margaret A. Somerville, “What about the Children?” in *Divorcing Marriage: Unveiling the Dangers in Canada’s New Social Experiment*, ed. Daniel Cere and Douglas Farrow (Montreal: McGill-Queen’s University Press, 2004), 63-78, and “Children’s Human Rights to Natural Biological Origins and Family Structure,” *Bioethics Research Notes* 23.1 (2011): 1-11.

³⁵ Evolutionists and evolutionary psychologists make this argument. For the former, see David C. Geary and Mark V. Flinn, “Evolution of Human Parental Behavior and the Human Family,” *Parenting: Science and Practice* 1.1-2 (2001): 5-61. These authors analyze the transition from primates to humans. For additional references, see Donald S. Browning, *Marriage and Modernization: How Globalization Threatens Marriage and What to Do about It* (Grand Rapids, Mich.: Eerdmans, 2002).

³⁶ Linda C. McClain is Rivkind Radler Professor of Law and Paul M. Siskind Scholar of Law at Boston University School of Law. See Linda C. McClain, *The Place of Families: Fostering Capacity, Equality, and Responsibility* (Cambridge: Harvard University Press, 2006) and “‘God’s Created Order,’ Gender Complementarity, and the Federal Marriage Amendment,” *Brigham Young University Journal of Public Law*, 20 (2006): 313-343.

³⁷ For a while, American law relied on the “tender years” doctrine, which required maternal custody for young children. That doctrine clearly conflicts with gender neutrality, however, which would require shared custody. Feminist lawyers had to find a way around this problem. Many now affirm the gender-neutral language of laws but interpret those laws to favor mothers.

³⁸ See American Law Institute, *Principles of the Law of Family Dissolution: Analysis and Recommendations* (Philadelphia: American Law Institute, 2002). See §2.03 (5) on caretaking functions: “Caretaking functions are tasks that involve interaction with the child or that direct, arrange, and supervise the interaction and care provided by others ... “ and §2.03(6) on parenting functions: “Parenting functions are tasks that serve the needs of the child or the child’s residential family. Parenting functions include caretaking functions, as defined in Paragraph (5), and all of the following additional functions ... ”

³⁹ Robert Veneziano and Ronald Rohner, “The Importance of Father Love: History and Contemporary Evidence,” *Review of General Psychology* 5.4 (December 2001): 382-405.

⁴⁰ Some people might resent mandatory genetic testing as an invasion of privacy or an extra cost, but not many people resent mandatory fingerprinting for those reasons.

⁴¹ Courts would presume that the birth (gestational) mother is the genetic mother and would

take legal precedence in the recognition of *parenthood if she is married to a man*. Unlike the egg donor, after all, she has protected, provided for, and bonded with the fetus and then infant through gestation, birth and nursing. This parallels the exception that we have already made by acknowledging “the best interests of the child” in connection with a woman’s husband even if not the genetic father, if he has lived with her, bonded with the infant, and made a legal declaration of his willingness to assume the legal responsibilities of fatherhood. If the birth mother has not married a man but the egg donor has, then the egg donor would take precedence.

⁴² A legal presumption is always of crucial importance, because it assigns the burden of proof to one side or the other. If the genetic father has a presumptive right to joint custody, for instance, then he does not need to prove himself fit for custody. On the contrary, his adversary must try to prove that he is unfit.

⁴³ Michael Kimmel, *Guyland: The Perilous World Where Boys Become Men* (New York: Harper, 2009).

⁴⁴ Katherine K. Young and Paul Nathanson, *Sanctifying Misandry: Goddess Ideology and the Fall of Man* (Montreal: McGill-Queen’s University Press, 2010), 175-182.

⁴⁵ Appleton knows, however, that the fatherless family has become an urgent social problem. “Although a majority of the Michael H. [v. *Gerald D.*] Court did not find troubling he exclusion of an interested and committed biological father, does an approach that appears to marginalize fathers and would-be fathers contract today’s efforts to cultivate and support paternal involvement?” (Appleton 268).

⁴⁶ Societies can try to lower the growth rate of their populations by encouraging the use of birth control or encouraging mothers to have their first children later than they would otherwise. Totalitarian societies are more aggressive. Under Chinese law, for instance, no couple may have more than one child.

⁴⁷ See chapter 4 of *Transcending Misandry: From Feminist Ideology to Intersexual Dialogue* (Montreal: McGill-Queen’s University Press, forthcoming).

⁴⁸ See June Carbone and Naomi Cahn, “Which Ties Bind? Redefining the Parent-Child Relationship in an Age of Genetic Certainty,” *William and Mary Bill of Rights Journal*, 11 (2002-2003): 1066-1070.

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