

Demonizing Mothers

Fathers' Rights Discourses in Child Custody Law Reform Processes

Since 1997, a contentious law reform process relevant to motherhood after separation and divorce—and the social construction of motherhood more generally—has been unfolding in Canada. Canada still has an older style of custody and access legislation, as opposed to the new wave statutes that were introduced in the late twentieth century in jurisdictions such as England and Australia. These countries have jettisoned the language of custody and access, and moved towards shared parenting regimes after divorce or separation (Rhoades). Canada too has moved towards adoption of this type of legal regime, albeit more tentatively. Although apparently neutral on their face, such regimes effectively enhance fathers' rights in relation to children, given the social reality that most children continue to live with and be cared for by their mothers after separation or divorce. Even without legislative reform, the trend of enhancing paternal contact—and paternal authority—is already occurring in Canadian courts, sometimes in circumstances that endanger mothers and children, such as abuse (Boyd, 2003a; Cohen and Gershain, 1999). Formal legislative reform that would move further towards shared parenting in Canada seems inevitable, although its timing is in question.¹

In this article, I suggest that influential discourses emanating from the fathers' rights movement in the recent Canadian custody law reform process embody a demonizing of mothers. These demonizing discourses in turn promote mother blaming, which reflects a profound lack of understanding of the social realities of motherhood in modern Canadian society (cf. Turnbull, 2001). These discourses also represent a backlash against legal and social changes that are viewed as benefiting women. The term “backlash” signifies both resistance to feminist struggles for change and efforts to maintain and increase the subordination of women (Walby, 1993: 79). Especially relevant to

this article is the fact that a significant aspect of backlash discourse focuses on the damage that the women's movement has supposedly wrought on the family. Fears of single women—perhaps especially single mothers—operating outside the parameters of the patriarchal nuclear family have manifested themselves throughout the history of the women's movement. Currently, the ability of single—or, in our context, separated or divorced—mothers to obtain child support and raise children independently of fathers/husbands threatens the ideological code of the Standard North American Family, as well as of heterosexuality (Stacey, 1998: 55-56).

Dorothy Smith (1999) has identified the Standard North American Family as follows:

It is a conception of The Family as a legally married couple sharing a household. The adult male is in paid employment; his earnings provide the economic basis of the family-household. The adult female may also earn an income, but her primary responsibility is to the care of husband, household, and children.... The nuclear family is a theorized version of SNAF. (157)

Fathers' rights advocates generally endorse this traditional heterosexual form of family, asserting it as a remedy for the social ills they identify, and rarely talking about alternative family forms in any positive manner: "All children have two parents, not one, not three, but two" (Marc-André Pelletier, President, Entraide pères-enfants séparés de l'Outaouais, June 3, 1998).² Some fathers' rights advocates also raise a passionate critique of liberalized divorce laws, which are seen as threatening the traditional family (e.g. Hermina Dykxhoorn, Executive Director, Alberta Federation of Women United for Families, April 29, 1998). One such group has suggested that divorce should be discouraged and that introducing a joint custody norm might assist as a deterrent to divorce (Equitable Child Maintenance and Access Society (Edmonton), April 29, 1998).³ Even when parents legally separate, mothers encounter considerable pressure, including legal directives citing the best interests of children, to do whatever possible to recreate the family unit that has been split asunder (Bourque, 1995; Smart, 1991). Separation of spouses no longer connotes a clean break or severing of familial ties when custody or access disputes arise in relation to children. Indeed, Gwendolyn Landolt for REAL Women has referred explicitly to family being "the traditional mother, father and children," regardless of whether separation or divorce had occurred (April 1, 1998).

The most recent catchword for this recreated family form is "shared parenting," while joint custody was its precursor. What is interesting is that advocates for shared parenting typically ignore the fact that genuinely shared parenting responsibilities do not exist in most intact families. Their rhetoric thus ignores mothers' caregiving responsibilities, which are reinforced by social

and economic norms (Boyd, 2003a). The motto of the National Alliance for the Advance of Non-Custodial Parents is “kids need both parents” (Jason Bouchard, June 3, 1998). Since after separation or divorce the parents no longer reside together, the essence of most fathers’ rights arguments is that mothers should continue to do the work of primary parenting and fathers should continue to have control over the form that maternal parenting takes (Bertoia and Drakich, 1993; Kaye and Tolmie, 1998a: 189). This argument reasserts a traditional model of parenting under which mothers are accorded little autonomy or recognition for the conditions under which they perform the labour of motherhood.

Canadian child custody law reform

The main reason child custody law has been seriously reviewed in Canada in recent years is that fathers’ rights advocates and their supporters in the Senate successfully blocked child support law reforms to the *Divorce Act* in 1996 until the federal government agreed to review custody and access law (Bala, 1999; Boyd, 2003a). Both areas were perceived as disadvantaging fathers. A Special Joint Senate and House of Commons Committee on Custody and Access was created as a result. The link between enhanced legal requirements that non-custodial parents (mostly fathers) live up to their child support responsibilities and their demand for more rights in relation to their children (specifically joint custody or shared parenting) was patent. Although many groups had concerns about the operation of child custody law, fathers’ rights discourse largely set the agenda for the Special Joint Committee (SJC) public consultations during 1998. The cross country hearings were dominated by Committee members who were sensitive to the concerns of fathers and often hostile to female witnesses (Boyd, 2003a; Diamond, 1999). One Senator was overtly sympathetic to fathers’ rights witnesses, who were often given more time to speak. Female witnesses—including those speaking on behalf of abused mothers—were asked more challenging questions and were sometimes heckled by men in the audience. The media seemed broadly sympathetic to fathers’ rights arguments. Despite active and thoughtful engagement in the law reform process by women’s groups—emphasizing mothers’ caregiving responsibilities and the relevance of abuse of women and children to custody decision-making—the Committee focused on gender bias against fathers.

In their testimony before the SJC, fathers’ rights advocates aligned the rights of fathers with the needs and best interests of children. They asserted a crucial need for the “children of divorce” to have contact with fathers in order to ensure their psychological well-being. This occurred despite the fact that “children of divorce” is increasingly contested as a category that is recognizable and discrete (Smart, 2003) and that studies indicate that continuing contact with each parent is only one factor associated with positive outcomes in children (Bailey and Giroux 43-58 [REF MISSING]). Other key factors are a close, sensitive relationship with a well-functioning parent (generally a

primary caregiver mother) and avoidance of parental conflict. Obviously, these factors can be in competition with each other in individual fact situations, particularly those involving high conflict between parents or spousal abuse. However, the discourse in child custody debates is often not based on evidence in studies, but rather on rhetoric (Boyd, 2001; Burton, 2000; Kaye and Tolmie, 1998a, 1998b). Thus, it is important to look at the key arguments made by fathers' rights advocates during the custody law reform process, as they had an impact on its outcomes, in part through their negative portrayals of mothers. I do not have the space to point out the many problems with the fathers' rights discourse (but see Kaye and Tolmie, 1998a, 1998b) but rather focus on identifying the rhetoric that pervaded the law reform process.

Fathers' rights discourse at the Special Joint Committee (1998)

Eight themes that emerge from the presentations that fathers' rights advocates made to the Special Joint Committee hearings on custody and access in 1998 will be explored below.⁴ They are:

1. The Ills of Father Absence
2. The Ills of Single Mothering
3. Mother Blaming
4. Anti-Feminism
5. Bias of the Legal System Against Fathers and in Favour of Mothers
6. Treat Fathers Equally: The Formal Equality Model
7. Child Support Orders Against Fathers are Unfair/Excessive
8. Remedies: Shared Parenting, Joint Custody, or Paternal Custody

Most of these themes reflect a negative assessment of mothering in contemporary Canadian society and fail to take account of the complex social realities of mothering (Turnbull, 2001). Most are also socially conservative in their approach to family, are anti-feminist, and adopt a problematically formalistic and simplistic approach to sex equality.

1. The ills of father absence

The first theme is the terrible consequences of fatherlessness for children. Judith Stacey has argued that national rhetoric in the United States has shifted from an emphasis on the dangers of a motherless society (caused by women entering the workforce, for instance) to dangers of a fatherless society. This is not to say that mothers are not still excoriated in the new discourse. Indeed, as we shall see, mothers are blamed for father absence. However, the rhetoric about fatherlessness has been stepped up and the "two parental crises discourses are flourishing in tandem" ([SOURCE?]: 54). This trend appears to have crossed the border to Canada. Fathers' rights advocates at the Special Joint Committee consultations suggested that children suffer from the absence of their fathers, which leads to many social ills (Burton, 2000), including criminality:

In the U.S., a too-large majority of long-term prison inmates grew up without fathers. (Carolyn VanEe, President, Equitable Child Maintenance and Access Society (Edmonton), April 29, 1998)

People talk about the boys turning to the gangs in L.A. and turning to violent TV, etc. The lack of good leadership and good fathers for men is an underlying cause of this. (David A. Campbell, Fathers for Equality, May 19, 1998)

The need for fathers as sexual role models was also cited, along with the consequences of failing to provide them:

[S]tatistical information backs up the high cost of fatherlessness or father absence. For girls, never feeling worthy of love from a man, it's teenage pregnancies [...]. For boys, it's not knowing how to be a man or how to interact with women. Often violence masks their anger in their father's absence. (Heidi Nabert, Director, National Shared Parenting Association, March 11, 1998)

The Alberta Federation of Women United for Families put this point a bit more neutrally, addressing the divorce context specifically:

For healthy development, children need and deserve both a mother and a father actively involved and present in their lives. [...] Custody and access problems are only the symptoms; divorce is the problem. (April 29, 1998)

2. The ills of single mothering

The corollary to the notion that children suffer from lack of contact with fathers is that children suffer from living with single mothers, who form the majority of single parents:

We could fill entire libraries with reports that specifically address the harm done to children after parental separation. Children in single-parent families are liable to experience two or three times as many problems as those in so-called normal families. (Gilles Morissette, Entraide pères-enfants séparés de l'Outaouais, June 3, 1998)

One group offered a legal explanation of how single mother families are formed, which indicated that for these groups, the term “single parent” really meant “single mother”:

The term “single-parent family” is used to designate the family unit consisting of the custodial parent and the children. The term “single-

parent” means that the child has only one parent. Custody of the children is granted on the basis of the parent’s gender. The mother need only refuse to accept shared custody in order to immediately obtain sole custody. (Claude Lachaine, Director, Groupe d’entraide aux pères et de soutien à l’enfant, April 3, 1998)

The problems encountered by children living only with their mothers were said to include growing up in poverty and remaining poor as an adult, developmental and behavioural problems, emotional difficulties, learning difficulties, and early child-bearing: “In the end, they will end up involved with drugs, alcohol, violence, crime and, above all, suicide. Quebec has record suicide levels” (Gilles Morissette, Entraide pères-enfants séparés de l’Outaouais, June 3, 1998). The Executive Director of the Alberta Federation of Women United for Families stated that children in single parent homes suffered the following problems:

Boys, in particular, living with a separated, divorced or never married parent in 1986 were more likely by 1992 to be diagnosed with somatic complaints, identified as delinquent, aggressive, anxious, depressed or withdrawn. Similarly, compared to peers in intact families, girls [...] were more likely to suffer from attention problems in 1992 or to be labeled aggressive. Adult female children of divorce also experience a lack of self esteem, which according to the studies that have been done may be accounted for in terms of divorce’s impact upon parental access. (Hermina Dykxhoorn, April 29, 1998)

Taking a more extreme position, one group explained at length how single mothers were a burden on taxpayers, and suggested that single-father headed families (statistically far fewer in number than single-mother headed families) were far more efficient than those headed by mothers.

Partly it is that [single fathers] are a select group; partly it is that they take it enormously seriously; and I think partly it is that their kids know, because they are not getting paid to do it. Overwhelmingly, our social policy says that fathers are not paid for fathering. The tax credits are directed towards mothers, so the kids know that the fathers are doing it out of love. (Glen Cheriton, FatherCraft Canada, June 1, 1998)

In addition to suggesting that single fathers were superior to single mothers, this group stated that mothers give children over to fathers when the child becomes “a problem,” suggesting that mothers are fickle in relation to their desire to care for children. Another group referred to one of the benefits of the shared custody approach: “the mother is no longer overprotected”

(Ghislain Prud'homme, Director, Groupe d'entraide aux pères et de soutien à l'enfant, April 3, 1998), implying that single mothers are pampered by government and legal policies.

3. Mother blaming

The negative portrayal of single mothers identified in the previous section is one version of mother blaming, but in child custody reform debates, another version arises. It was often suggested by fathers' rights advocates that mothers actively try to keep fathers away from children:

Fathers everywhere are desperately trying to be part of their family's life, and they are blocked by vindictiveness in most cases. [...] Most of the mothers do not understand the point that the father is absolutely necessary in the life of the child." (Malcolm Mansfield, President, Fathers Are Capable Too (FACT), March 11, 1998)

In today's reality, access is used by the custodial parent as a control mechanism. (Gilles Morissette, Entraide pères-enfants séparés de l'Outaouais, June 3, 1998)

Some pro-father witnesses stated that denial of access (by mothers) is a form of child abuse, even, for one witness "one of the most damaging forms of child abuse" (Joe Rade, individual presentation, June 1, 1998):

A severe form of child abuse is when one parent alienates a child from the other parent. Statistically, this is overwhelmingly mothers more than fathers. (Carey Linde, Vancouver Men, April 27, 1998)

If you have custody, then all of a sudden you have all the power, all the litigant power. [...] If you are going to abuse your child by refusing that child the right to maintain an ongoing relationship with both parents—so, since you're the custodial parent, you're saying, 'No, you can't see your daddy today'—that's harming the child. Then the court needs to address the fact that that is a form of child abuse. (Heidi Nabert, National Shared Parenting Association, March 11, 1998)

A common refrain was that mothers frequently use dishonest tactics such as parental alienation and false allegations of sexual abuse, and that they "abduct and alienate children as a privilege" (Gus Sleiman, President, Men's Educational Support Association, April 29, 1998):

False accusation seems to be the tool of choice in family litigation. (Malcolm Mansfield, Fathers Are Capable Too (FACT), March 11,

1998) (see also Parents Helping Parents, May 1, 1998; D.A.D.S. Canada, March 30, 1998)

One of the problems we're facing is that, before a judge, before the bench, we absolutely have to prove that we are good fathers or that we were good fathers, whereas the mother doesn't have to prove anything at all. The mother's mere allegations are sufficient for a judge to take custody away from the father or limit his access. (Claude Lachaine, Groupe d'entraide aux pères et de soutien à l'enfant, April 3, 1998)

Jay Charland, Spokesperson for Men's Education Network, talked about his own experience of a false allegation of violence having him removed from his home. Joint custody was later restored to him by a judge but he claimed he had not seen his child, implying that not only was the mother blocking his contact but that judges in Alberta did not enforce orders against mothers (April 29, 1998).

In a troubling parallel with the now notorious suggestion made by Mr. Justice McClung that the inordinately high rate of male suicide in Québec might be attributable to the judicial decisions of former Supreme Court of Canada Justice Claire L'Heureux-Dubé (Lessard, 1999), some fathers' rights advocates pointed to the connection between family and divorce situations and male suicide, suggesting that the lack of power that men experience in this context in comparison to mothers generates suicidal tendencies (Harvey Maser, President, Victoria Men's Centre, April 27, 1998; David A. Campbell, Fathers for Equality, May 19, 1998). As also happens in references to male suicide, it was suggested that mothers are greedy for money, which generates desperation in men: "I hate to say it, that there are a lot of greedy mothers out there" (Nardina Grande, President, Stepfamilies of Canada, March 31, 1998). Claude Lachaine for Groupe d'entraide aux pères et de soutien à l'enfant stated that stakeholders in the system favour the single-parent approach, that is the "single-parent mother/automatic bank teller father approach" (April 3, 1998).

Not only were mothers often blamed (including, quite vociferously, by other women such as those in Stepfamilies of Canada and Second Spouses of Canada, March 31, 1998), but punitive measures against mothers were suggested. Stacy Robb for D.A.D.S. Canada suggested jail time be considered in relation to false allegations of abuse (March 30, 1998). Carey Linde for Vancouver Men said, in reference to so-called parental alienation, that "[t]here should be criminal sanctions against alienating parents" (April 27, 1998).

This assigning of blame to mothers not only overstates the incidence of false allegations and parental alienation instigated by mothers. It also ignores the fact that fathers who feel alienated from their families and from their children sometimes have less than positive histories in relation to their own family responsibilities and conduct towards their spouse and children. Darrin White, a father who committed suicide in April 7, 2000 and quickly became a

“poster boy” for fathers’ rights advocates who said that the family law system was responsible, in fact had been charged with assault, had taken most of the funds from the joint account with his wife, and had largely failed to support his children (Gordon 2000; Matas, 2000). Kirby Inwood, spokesman for the Coalition of Canadian Men’s Organizations (March 31, 1998), who complained he had not seen his son in 10 years, was convicted in the late 1980s of assault of his son and assault causing bodily harm of his wife. In the early 1990s, he was awarded supervised access to his son, but shortly thereafter he made public, threatening remarks regarding his wife. A second custody hearing denied him any access to his son because of the physical danger he posed to the mother and the danger of psychological or physical harm to the child.⁵ Thus, some of the stories cited by fathers’ rights advocates to support their assignments of blame against mothers actually reflected behaviour on the part of fathers who failed to meet basic parental responsibilities.

4. Anti-feminism

Closely connected to the anti-mother theme in fathers’ rights discourses is anti-feminism. Feminists are portrayed as hostile to proper mothering within the traditional heterosexual family, which includes ensuring that fathers are closely connected with children, preferably by staying within marriages but if not, then by facilitating joint custody or shared parenting. Carey Linde for Vancouver Men suggested that “gender feminists”—the bad or “adolescent” feminists “with a political agenda of their own that doesn’t include children, at least not male children”⁶—should be contrasted to “equity feminists.” The latter, he said, are the majority of women, who would support fathers. Linde added:

The organized women’s movement, for all the good it has brought, gave up long ago on ideas like joint custody and shared parenting. Their silence is deafening. (Carey Linde, Vancouver Men, April 27, 1998)

Before the Special Joint Committee, some fathers’ rights witnesses argued that feminists have sought equality (for women) in the workplace but then have not sought equality (for men) in the home (FACT, March 11, 1998). Moreover, it was suggested that the legal system has responded to the former initiative for women, but not in favour of the latter initiative for men. In part this discrepancy was said to result from the fact that judicial education has been biased in favour of mothers, due to the undue influence of feminism:

In the last decade this sexism has markedly increased, after judges were taught that women seeking custody were at a disadvantage in the courtroom. Fathers who wish to parent their children post-divorce today have a situation even more pronounced than women entering

the workforce only a few decades ago. (Paul Miller, Member, Men's Educational Support Association, April 29, 1998) (see also Groupe d'entraide aux pères et de soutien à l'enfant, April 3, 1998)

In the fathers' rights worldview, then, the legal system has been infiltrated by feminists, who in turn favour mothers.

Fathers' rights advocates also invoked anti-feminist discourses in a way that downplayed the significance of male violence against women and its relevance to custody disputes (Jaffe, Lemon and Poisson, 2003). They stated that feminists hold excessive power in relation to social and political institutions such as women's shelters and hospitals, and that these institutions inappropriately influence mothers against the fathers of their children:

The feminist orientation of women's shelters and other support services for women have permeated the justice system to establish an ideology which suggests that women are incapable of violence or deceit, and men are all potential violent, sexual predators. (Louise Malenfant, Parents Helping Parents, May 1, 1998)

The first time the mother goes down to the women's shelter, that's just the first step where the process of indoctrination of gender feminism starts to take place [...]. (Gus Sleiman, Men's Educational Support Association, April 29, 1998)

[W]omen are encouraged to seek out feminist therapists, where ever possible, to substantiate and enforce the custodial parent's claim. (Joyce Owens, Secretary, New Vocal Man Inc., May 1, 1998)

The BC Men's Resource Centre actually invoked images of witchcraft in their critique of feminist "infiltration" of hospitals:

In the area of child abuse allegations, the Salem witch-hunts have taken their toll, as extremists have attempted to hang everyone in their path. The Children's Hospital has recently been advised of several self-admitted, gender-feminist medical staff practicing their witchcraft in this hospital, using children as both the bait and the weapon with which they have extracted the penalty for being the wrong gender. (April 27, 1998)

In an increasingly familiar challenge to feminist analysis of male violence against women and to statistics on male violence against women (DeKeseredy, 1999), William Taylor Hnidan for the B.C. Men's Resource Centre, stated that violence was not a gender-specific phenomenon (April 27, 1998). The Men's Educational Support Association (April 29, 1998) and Men's Equalization Inc.

(May 1, 1998) echoed this theme. Harvey Maser for the Victoria Men's Centre said that "violence and domestic violence is, if not equal, slightly predominant by the mother or the woman in the family" and that "violence is very often translated into animosity toward the other partner in divorce" (April 27, 1998).

To redress the alleged favouring of feminist views in social and legal institutions, fathers' rights advocates argued that greater resources should be provided to men's groups, suggesting that women's groups are inappropriately funded by the state (e.g. David A. Campbell, Fathers for Equality, May 19, 1998). The Men's Educational Support Association recommended that "[a] legal action fund should be created to enable fathers to legally challenge their longstanding historical disadvantages in family law" (Paul Miller, April 29, 1998). In challenging feminist analysis of law, fathers' rights advocates thus implied that the legal system has favoured mothers, who have in turn selfishly exploited this power.

5. Bias of the legal system against fathers and in favour of mothers

As shown above, fathers' rights advocates suggested that feminists, and thus mothers, have attained inappropriate power in various institutions, including law. They also argued that the legal system is complicit in keeping children from fathers because it has gone too far in favouring mothers:

[T]here is enormous bias in the legal system, and the result is fathers are excluded from the lives of their children. (Glen Cheriton, FatherCraft Canada, June 1, 1998)

The widespread gender bias of our courts empowers women to take any actions they feel compelled to take without the fear of consequences. (Gus Sleiman, Men's Educational Support Association, April 29, 1998) (see also New Vocal Man Inc., May 1, 1998; Parents Helping Parents, May 1, 1998)

Government was not exempt from this allegation of bias. The Men's Educational Support Association argued that government "removed gender bias against women only to replace it and make a gender bias against men" (Gus Sleiman, April 29, 1998). Kirby Inwood for the Coalition of Canadian Men's Organizations alleged bias against the Justice Minister at the time: "Anne McLellan [...] has written many articles that are strongly anti-father, anti-male in the past" (March 31, 1998).

However, the judicial system was the key target of fathers' rights advocates. Witnesses stated that mothers almost automatically receive custody of children and are always believed in court:

There's a definite gender bias [against fathers] [...]. I find if you go into family court as a father, you have to prove your worth to visit your

child. As a mother, you're deemed intrinsically better just by being. (Deborah Powell, Fathers Are Capable Too (FACT)—National Association, March 11, 1998) (see also D.A.D.S. Canada, March 30, 1998; Parents Helping Parents, May 1, 1998; Men's Educational Support Association, April 29, 1998)

Fathers' rights advocates invoked the language of sexual and systemic discrimination developed within feminist equality analysis, often citing custody statistics and suggesting simplistically that anything other than a 50-50 sharing of custody would be discriminatory (Groupe d'entraide aux pères et de soutien à l'enfant, April 3, 1998; Gilles Morissette, Entraid pères-enfants séparés de l'Outaouais, June 3, 1998).⁷

A key argument was that primary caregiving (which remains predominantly a maternal responsibility) is emphasized inappropriately by judges, which in turn disempowers fathers (Jason Bouchard, National Alliance for the Advance of Non-Custodial Parents, June 2, 1998). Fathers' rights advocates equated judicial emphasis on caregiving with a maternal presumption:

[F]athers are discouraged from obtaining joint custody through manipulation and intimidation, which accounts for the majority of sole-custody decisions favouring mothers. The historical doctrine of primary breadwinner, tender years, primary caregiver, and best interests of the child favour one parent and do not address the needs of the children. (Carolyn VanEe, Equitable Child Maintenance and Access Society (Edmonton), April 29, 1998)

The masters and the judges at the lower level still buy into the primary caregiver, the maternal preference, stability. (Carey Linde, Vancouver Men, April 27, 1998)

Glen Cheriton for FatherCraft Canada asserted that "there are a large number of cases where fathers are the primary caregivers and are losing to the mothers in court cases because of bias of the system" (June 1, 1998).

A lengthy critique by the National Shared Parenting Association (Saskatchewan) of the primary caregiver presumption (which does not exist in Canadian law: Boyd, *Child Custody*, ch. 7) included a disparaging of mothers' caregiving responsibilities as involving only cooking and cleaning, and a corresponding valorization of fathers' symbolic roles: "the courts have sacrificed continuity of the children's critical relationship with a parent for the continuity in terms of who cooks their meals and cleans their clothes" (Leonard Andrychuk, April 30, 1998).

Not only did fathers' rights advocates criticize custody and access orders for bias towards mothers, but the lack of enforcement of orders giving fathers custody or access rights was also said to empower mothers inappropriately:

Judges in this province ... do not enforce any orders against the mother. (Jay Charland, Men's Education Network, April 29, 1998)

[T]here's nothing in this country to reunite a father with a child; it's only to tear them apart. (Deborah Powell, Fathers Are Capable Too (FACT), March 11, 1998).

As well, fathers' rightists alleged that governmental efforts to address domestic violence made men guilty until they find a way to prove themselves, thus criminalizing men who just want to be fathers" (Parents Helping Parents, May 1, 1998). Men's Equalization Inc. suggested that men arrested under zero tolerance policies in Manitoba "have been robbed of their families" (Roger Woloshyn, President, May 1, 1998). No mention was made of the difficult circumstances under which mothers operate when they are either abused themselves, or fear that their children are being abused (Jaffe et al.).

6. Treat fathers equally: the formal equality model

As a remedy for the alleged bias in favour of mothers and poor parenting practices of mothers, fathers' rightists argued that fathers should be treated "equally" by law. This vision of equality was a formalistic one rather than the substantive equality model that has been developed by feminists in order that law might take account of social realities such as women's unequal position in the family and mothers' disproportionate responsibility for child care (Turnbull, 2001).

Basically, both parents' right to be equal and to parent their children equally must be respected. (Marc-André Pelletier, Entraide pères-enfants séparés de l'Outaouais, June 3, 1998) (see also Victoria Men's Centre, April 27, 1998)

A program of affirmative action should be created within the judicial system to encourage awarding of children to fathers. ... A section should be added to the Divorce Act that overtly states that both sexes have equal ability to parent their children post-divorce. (Paul Miller, Men's Educational Support Association, April 29, 1998)

Several groups took a troubling formulaic approach, suggesting, for instance, that there should be no divorce without automatic joint custody and that no parent is only 51 percent parent or that a child with an English father and a French mother should have a 50-50 education in each language (e.g. FED-UP, April 3, 1998). One group suggested that presumptive shared custody should kick in automatically as soon as there is a marital breakdown, with the child's physical and social environment remaining intact. Each parent would have an equal share of the children's time and responsibility for the

children's upkeep. The kicker was that if either parent refused to comply with this formula, s/he would concede custody to the other (Entraide pères-enfants séparés de l'Outaouais, June 3, 1998). In other words, if a mother raised an issue about this 50-50 formula, she would lose custody.

Being treated equally implied that fathers should have equal rights in relation to decisions regarding children, regardless of caregiving patterns.⁸ This notion has been much criticized by those who have shown that joint custody gives fathers rights—including the right to control women and children—without responsibilities (see Boyd, *Child Custody* 123). It leaves mothers with responsibility not only for childcare, but also for consulting with the other parent regarding decisions. Some witnesses were quite explicit about endorsing this unequal sexual division of labour. In recommending shared or joint custody, Gwendolyn Landolt, National Vice President of REAL Women said: "The mother may be the primary caretaker, but the father should have equal involvement with regard to medical concerns, education, health. The father should play a vital role in the child's life" (April 1, 1998).

Other fathers' rights advocates, in making their equal rights argument, explicitly asserted a model of parenting that reinforces traditional, gender-based, asymmetrical models of mothering and fathering:

[A]s soon as kids get up to a certain level... a lot of things that fathers do become of more interest to kids. I work a lot with visible minority men, and the gender roles are fairly well defined there. In most of these communities they have some sort of sense that at some point children must kind of break free from the mother—very much in the native community—and the father helps to bring them out into the world. (Glen Cheriton, FatherCraft Canada, June 1, 1998)⁹

What is more important? Coaching hockey or preparing the child's lunch? (Brian St. Germaine, Vice President, Equitable Child Maintenance and Access Society (Edmonton), April 29, 1998)

One group suggested that fathers should have rights based on biology alone, asserting an essentialist vision of parenthood that obviates the significance of social parenting, for which mothers tend to take more responsibility (Lessard, forthcoming 2004 [CANYOU UPDATE?]):

I believe when a child is born, the child should have equal access to both parents.... I think it should be a law that both parents are on the birth certificate. I believe if the mother does not tell who the father is but if a man does come forward at any time, even if it's ten years later, and says "I am that child's father," that due diligence is done. It's simple to do. A simple test will prove if that man is the father, and then that man will have the opportunity to enter into that child's life in a

productive role. (John Barson, Executive Director, Family Forum, May 19, 1998)

Ken Wiebe for the Dick Freeman Society used language that suggested that parental (paternal?) authority over the family was a key concern in the claim for equality:

The responsibility of the legislature and the courts in this issue is to ensure that there is a post-divorce situation that respects the equality, the parental authority, the integrity and the sanctity of the family [...]. (April 27, 1998)

He added, adopting an anti-state, libertarian approach, that he was not interested in having the legislature or the courts define his parental responsibilities for him, whether those be financial or time-related, and that “as a father, I have a pretty good idea of what those responsibilities are with respect to my children.” Thus, the equality approach asserted by fathers’ rightists implied a desire for paternal (patriarchal) authority over children and, thus, over mothers.

7. Child support orders against fathers are unfair/excessive

As mentioned at the outset, the recent child custody law reform debates emerged largely as a result of governmental efforts to enhance and enforce child support obligations, which incited the ire of fathers’ rights advocates against not only the government but also mothers. At the Special Joint Committee, these advocates complained that fathers were suffering as a result of the new child support system, and that if they could only see their children more, they would pay more (BC Men’s Resource Centre, April 28, 1998). One group said: “The existing system culminates in the refusal of men to support their children, from who they are unjustifiably separated and their access excommunicated” (Gus Sleiman, Men’s Educational Support Association, April 29, 1998). Glen Cheriton for FatherCraft Canada argued that judges do not want to impose onerous child support obligations on mothers, so they give mothers custody instead (June 1, 1998). In general it was implied that mothers do not contribute to children’s expenses and, as we saw earlier, are greedy for money. William Levy for F.E.D.-U.P said: “Dump the kids on mom. Stick dad with the bill” (April 3, 1998). Cheriton also suggested that child support orders are not enforced against mothers in the same way that they are against fathers.

In addition to arguing for enhanced paternal rights, several groups argued for stepped up, even punitive, maternal financial obligations (e.g. Equitable Child Maintenance and Access Society, Calgary Chapter, April 29, 1998). For some groups, equal treatment of fathers and mothers appeared to mean not only equal rights in relation to children but also that child support awards should be

paid in the same amount by non-custodial mothers and fathers, regardless of the fact that women tend to earn less than men.

Women want equality. Okay, then let's have equality right across the board, not that men to pay this much and women don't even have to pay an iota. (Joyce Owens, New Vocal Man Inc., May 1, 1998)

Stepfamilies of Canada took an even more vengeful approach, suggesting that if mothers are going to get custody, then they should assume full financial responsibility for children:

If you're going to [...] give custody to the mother[...] it should be true custody. That means a complete financial obligation for the child, as well as taking care of the child's daily needs. [...] If women want the kids, give them kids. They'll have to be truly feminist and accept both financial [...] and emotional responsibility for the children. (Nardina Grande, March 31, 1998)

The child support discourse illustrated that fathers' rights arguments were not so much about the best interests of children as about regaining authority over mothers and children or, failing that, relinquishing responsibility altogether and allowing mothers to sink or swim on their own.

8. Remedies: shared parenting, joint custody, or paternal custody

Although some of the fathers' rights recommendations focused on child support, the legal remedy most often proposed by fathers' rights advocates was a norm or presumption of shared parenting or joint custody, which in turn reinforces mothers' ties with partners from whom they may have separated for good reason. Danny Guspie for the National Shared Parenting Association said that children have a "God-given right" to shared parenting (March 11, 1998). The shared parenting remedy was typically based on an argument that such a norm would both benefit children and end discrimination against fathers, and in favour of mothers:

If this government is willing to end the injustices against children and men, if it is willing to reduce the emotional and financial costs of divorce created by litigation and re-litigation, it must act immediately to implement the equal-share parenting concept. Children need both parents. (Gus Sleiman, Men's Educational Support Association, April 29, 1998)

The first thing [the Committee] needs to do is to eliminate the parental inequity that is flagrant today, to set things straight, to clearly establish that parental equity is the norm today and that shared

custody must be presumptive. (Marc-André Pelletier, *Entraide pères-enfants séparés de l'Outaouais*, June 3, 1998) (see also *Equitable Child Maintenance and Access Society* (Edmonton), April 29, 1998; *FACT*, March 11, 1998)

Several groups referred explicitly to equal parenting time as well as equal decision-making (e.g. *Men's Equal Access Society*, May 20, 1998). However, as discussed earlier, the fathers' rights concept of joint custody does not necessarily imply shared everyday care and responsibility. The equal rights embodied by the concept of joint custody would be granted presumptively, generally regardless of the history of care or uneven assumption of responsibilities. Moreover, fathers' rights advocates tended to assume that equality of parenting exists prior to separation. Ken Wiebe for the *Dick Freeman Society* stated that "the equality situation of parenting prior to divorce should be maintained after divorce in the fashion that is most applicable to the particular circumstances of the parents" (April 27, 1998). Yet equally shared parenting responsibilities in intact families rarely exist in practice. Perhaps Mr. Wiebe did not mean equal responsibilities, but rather equal rights, but in this case a notion of rights without responsibilities was asserted that favoured paternal authority. As well, arguments for shared parenting were sometimes linked to arguments for diminished child support obligations, which suggests that the fathers' rights rationale for instituting a joint custody norm might be to diminish financial responsibility as much as to enhance time with children. For instance, the *Equitable Child Maintenance and Access Society* (Calgary) suggested that "child support guidelines be based on a sliding scale for time spent with the child" (Marina Forbister, Past President, April 29). On this analysis, mothers who share custody with fathers might lose financial support even though their own expenses (e.g. housing that accommodates children, children's clothing) might remain relatively constant.

A few groups went beyond recommendations for joint custody/shared parenting to advocate granting sole custody to fathers. Glen Cheriton for *FatherCraft Canada* suggested it would be better—and cheaper—for fathers to simply be given sole custody, because single mothers require more financial subsidization than single fathers. Single father-headed families were therefore regarded as more efficient. The ostensible reason for their effective parenting, as we saw above under Theme 2, is "because [fathers] are not getting paid to do it" (June 1, 1998). When asked whether single-father headed families were more successful than single-mother headed families because fathers had more help (e.g. from grandmothers or step-mothers) raising the children, Cheriton agreed, but still attributed success to the father for having the extra help: "if the single father is involving, at no cost to society, no cost to the government, his sister, his mother, a new girlfriend, then we should credit him with that success...." (see also Cheriton, 1998).

Overall, then, fathers' rightists suggested that mothers cannot be trusted

to parent effectively as sole custodial parents, and that in some, cases, they might better be removed from custody altogether on a financial efficiency argument.

Conclusion

The fathers' rights arguments outlined above, which were voiced before the Special Joint Committee in 1998, not only invoked 'backlash' or conservative discourses on the family, but also diminished the key caregiving role that most mothers play in their children's lives. In the fathers' rights submissions, caregiving disappears and mothers become problematic figures: they produce delinquent children without paternal role models, they block paternal access, they make up stories about abuse, they are economically unstable, in short they generate numerous problems in their children and also in the fathers of their children. Moreover, they are encouraged in doing so by feminists, the legal system, and other social institutions. Fathers' rights advocates extracted equality rights discourse from feminism and constructed a picture of their own inequality within family law. They positioned themselves as a group that had experienced terrible discrimination in the legal system and that the Special Joint Committee had to help, and they linked this claim to the interests and rights of children. Only through shared parenting or joint custody norms, they suggested, would these problems be addressed, and children made healthy. Some even implied that if a father is keen to parent, it is more efficient to allow him to do so than to financially support a single mother. Mothers were demonized in these discourses.

These demonizing discourses have not completely dominated the law reform process, but they did influence the compromise reached by Canadian law reformers. For example, the Report of the Special Joint Committee (1998) had a section on gender bias that dealt only with bias against fathers in the family law system, not bias against mothers (Boyd, 2003a: 202). That section also portrayed mothers as manipulative and selfish. To rectify this perceived problem, imposition of a shared parenting norm was endorsed, despite conflicting evidence about its efficacy in England and Australia (Rhoades, 2002). As well, some SJC recommendations reflected the fathers' rights concerns about child support guidelines. Moreover, the tone of the SJC Report has influenced subsequent processes.

Arguably, the research commissioned by the Department of Justice after the SJC Report mainly reflected the SJC's preoccupations in relation to research needed on issues of particular relevance to fathers rather than mothers. None of the commissioned research papers dealt specifically with violence against women, the impact on children of witnessing violence, gender bias in family law, or the efficacy of using law to enhance shared caregiving responsibility. The research did include studies on topics such as allegations of child abuse, access enforcement, and assessment of the father/child relationship following parental separation from the male perspective.¹⁰ As well, since the

SJC Report, child custody law reform discourse emanating from the government has become strikingly gender neutral, with little mention of the gendered nature of domestic abuse or the disproportionate responsibility of mothers for childcare. This ostensibly neutral discourse arguably reflects a desire to avoid the criticism of fathers' rights advocates and to move away from polarized positions in the "custody gender wars" (Bala, 1999). At the same time, it means that the social realities of gendered parenting patterns, in particular mothering, will be more difficult to recognize and deal appropriately with in processes designed to create new laws and in dispute resolution processes (Boyd, 2003b).

The proposed amendments to federal custody and access law contained in Bill C-22, *An Act to Amend the Divorce Act*,¹¹ passed second reading in Parliament in 2003 before being shelved, at least temporarily, in February 2004 by the new Minister of Justice in Prime Minister Paul Martin's government (Tibbetts). The Minister has since indicated that he supports the principles of the Bill and is committed to bringing the Bill back after consultation with caucus and Cabinet. He highlighted the need to consider same sex marriage when reforming the *Divorce Act*. This factor may delay the bill for some time, as the Supreme Court of Canada will not hear the same sex marriage reference until fall 2004, meaning that a decision may not be rendered until sometime in 2005.

Bill C-22 revealed that the arguments of the fathers' rights advocates did not entirely sway law reformers: it took account of some points made by women's groups, for instance, the relevance of the history of care of a child and family violence. However, the very effort to embody a compromise between fathers' rights groups and women's groups was embedded in the Bill and weakened its impact (Boyd, 2003b; Neilson, 2003). For instance, in resisting the fathers' rights recommendations to introduce a presumption of joint custody, reformers chose not to introduce any presumptions whatsoever. This decision precluded, for instance, a presumption against shared parenting or joint parental responsibility in cases involving violence or abuse. Bill C-22 also dropped important wording in the November 2002 Final Report of the Federal-Provincial-Territorial Family Law Committee that emphasized that facilitating contact with both parents was in the best interests of children *when it is safe and positive to do so* [emphasis added] [IF THIS IS A DIRECT CITATION PLS INSERT QUOTATION MARKS AROUND TEXT] (*Final Federal-Provincial Territorial Report on Custody and Access and Child Support*, 2002: Recommendation No. 8 at 19).

Whether the social realities of motherhood might better be taken into account under future proposals for a new post-separation parenting legal regime is questionable, given the experience in other jurisdictions (Rhoades, 2002). Fathers' rights advocates indicated after Bill C-22 was shelved that they anticipated that any future bill would better reflect the recommendations of the SJC, for instance, for shared parenting (Tibbetts, 2004). In order to avert new laws that compromise the position of mothers and children, particularly those

who have been affected by abuse, efforts will have to be made to ensure that lawyers, mediators, and judges are educated about the systemically unequal position of mothers within families and society and how the legal system can take account of it. Indeed, regardless of whether the current legal system is changed or not, these educational measures need to be taken so that lawyers, mediators, and judges do not assume that joint custody or shared parenting is a panacea for the problems in the family law system or a way to generate equality of parenting responsibilities between fathers and mothers.

Fathers' rights discourse that demonizes mothers has played a role in diminishing societal attention to the world as mothers see it when they encounter the difficulties of post-separation parenting, and, in particular, disputes over post-separation parenting. Many mothers would agree with Moray Benoit of the Victoria Men's Centre that primary care of children should not be left solely in the hands of mothers, and with his critique of the super-motherhood phenomenon that "to be a super mom you not only have to work full-time, you still maintain responsibility for the children" (April 27, 1998). However, many would also argue that far more systemic extra-legal change than including shared parenting norms in custody laws is needed in order that men equally share childcare responsibilities (Boyd, 2003a: 181-183, 212-213). Until changes that would facilitate men to engage more actively in parenting are in place, such as socio-economic changes to workplace norms, it is risky to introduce the types of changes that most fathers' rights advocates endorse.

This article is based on research supported by the Social Sciences and Humanities Research Council of Canada. Early versions were presented at the annual meeting of the Canadian Law and Society Association, Lake Louise Inn, June 1, 2000; the Tenth World Conference of the International Society of Family Law on Family Law: processes, practices and pressures, 9-13 July 2000, Brisbane, Australia; and the Mothering, Law, Politics and Public Policy Conference, Association for Research on Mothering 6th Annual Conference, York University, Oct. 18-20, 2002. Thanks to Karey Brooks and Rachel McVean for research assistance.

¹A Bill that would have embodied this reform in relation to Canada's *Divorce Act* was recently shelved by the Minister of Justice Irwin Cotler (Tibbetts, 2004). The Minister has since stated that he is committed to bringing the bill back after consultation with caucus and Cabinet colleagues ("Cotler likes custody reform package," 2004).

²All quotations from fathers' rights advocates have been taken from the transcripts of the 1998 public hearings of the Special Joint Committee on Custody and Access (SJC), available at <http://www.parl.gc.ca/InfoCom/CommitteeMinute.asp?Language=E&Parliament=1&Joint=1&CommitteeID=147> (accessed October 24, 2003)

³Presumably, the logic is that a mother would be deterred from obtaining divorce if she knew she would have to share custody with the father.

⁴I analyzed 34 such presentations, drawing on the SJC transcripts, *supra* note 2, and focusing mainly on groups rather than individual presenters. It should be noted that not all fathers' rights advocates are men. As we shall see, fathers' rights positions were sometimes presented by women before the SJC. In some cases, women's groups presented pro-family arguments that were similar to fathers' rights positions, e.g. Hermina Dykxhoorn of Alberta Federation of Women United for Families, April 29, 1998, who argued against liberalized divorce and for joint custody as the norm.

⁵See *R. v. Inwood* [1989] O.J. No. 248 (Ont. C.A.); *Inwood v. Sidorova* [1990] O.J. No. 1140 (Ont.H.C.J.); *Inwood v. Sidorova* [1991] O.J. No. 1417 (Ont.Ct.G.D.)

⁶This seems to represent a veiled reference to a stereotype of man-hating lesbian feminists.

⁷These statistical invocations are flawed (Boyd, 2003a).

⁸This simplistic notion of equality was also used in the 1984-85 presentations of fathers' rights groups to the Sub-Committee on Equality Rights of the Standing Committee on Justice and Legal Affairs. See Boyd and Young, 2002.

⁹This invocation of cultural and racial communities requires further analysis, as arguably it offers a stereotyped image of parenting in such communities.

¹⁰These reports are available from the Department of Justice, online: <http://canada.justice.gc.ca/en/ps/pad/reports/index.html>.

¹¹Bill C-22, *An Act to amend the Divorce Act, the Family Orders and Agreements Enforcement Assistance Act, the Garnishment, Attachment and Pension Diversion Act and the Judges Act and to amend other Acts in consequence*, 2nd Sess., 37th Parl., 2002 (2nd reading 25 February 2003), online: Parliament of Canada, <http://www.parl.gc.ca/LEGISINFO>.

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