

CRITIQUE AND COMMENT

DISCOURSING DADS: THE RHETORICAL DEVICES OF FATHERS' RIGHTS GROUPS*

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[This article describes and analyses the most common rhetorical devices used by Australian fathers' rights groups when presenting their position on family law issues in the public forum. It identifies these devices as: the language of formal equality; the language of rights; claims to victim status; the use of anecdotes and statistics; the conflation of children's interests with fathers' interests; appeals to the notion of the family; negative depictions of women; and a reconstruction of the notion of fatherhood. This article argues that the use of these devices has the effect of providing the concerns expressed by fathers' rights groups with an enhanced credibility and appeal.]

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I INTRODUCTION

Recently, fathers' rights groups in Australia appear to have developed a 'strong presence in the media.'¹ They have also gained the ability to affect 'the atmosphere in which legal and political changes are being debated.'² In relation to the emergence of a focus on fathers' experiences in family law proceedings for the care of children, Carol Smart has gone so far as to suggest that the 'legitimate discourse is now in the mouths of the fathers.'³ In this paper we will look at an aspect of the emerging credibility and influence of fathers' rights groups in the context of Australian public debates about family law and will examine the rhetorical devices and strategies these groups have used when presenting their concerns publicly.⁴ The devices we set out in this paper have proven extremely effective, despite the fact that their use by the fathers' rights groups has not always been necessarily conscious.

We will discuss the recurring rhetorical devices and strategies employed by Australian fathers' rights groups as follows: the language of equality; the language of rights; claims to victim status; the use of anecdotes and statistics; the conflation of children's interests with fathers' interests; appeals to the notion of the family; negative depictions of women; and the reconstruction of 'fatherhood'. These devices are not mutually exclusive. They are often used concurrently and may, in fact, reinforce each other.

II RHETORICAL DEVICES

The power of many of the rhetorical devices we describe lies in their appeal to established and 'obvious' norms. In the context of the child protection debate in the United States, Kate Sinclair has noted that 'backlash advocates'⁵ have credibility because they tend to be 'norm using' as opposed to 'norm setting'. In other words, they have credibility 'not because of the merit of their complaints, but rather because their messages are associated with established norms that reinforce dominant social preconceptions'.⁶ In a similar fashion, David Brown and Russell Hogg speak of the power of established norms which have become invisible as subjective value frameworks and instead have been reified or translated into 'commonsense'.⁷ They have noted that it is very difficult to challenge the impact of

¹ Miranda Kaye and Julia Tolmie, 'Fathers' Rights Groups in Australia and Their Engagement with Issues in Family Law' (1998) 12 *Australian Journal of Family Law* (forthcoming) 19, 22.

² Ibid 23.

³ Carol Smart, 'Losing the Struggle for Another Voice: The Case of Family Law' (1995) 18 *Dalhousie Law Journal* 173, 178.

⁴ We have set out the major concerns of fathers' rights groups in Australia, as expressed in promotional material, interviews, submissions to law reform bodies and advice to members, in Kaye and Tolmie, above n 1.

⁵ Kate Sinclair, 'Responding to Abuse: A Matter of Perspective' (1995) 7 *Current Issues in Criminal Justice* 153. She refers to US advocates who are a countermovement to the child protection movement.

⁶ Ibid 167.

⁷ David Brown and Russell Hogg, 'Law and Order Commonsense' (1996) 8 *Current Issues in Criminal Justice* 175, 175. On judicial 'commonsense' understandings of the world, see generally Regina Graycar, 'Gendered Assumptions in Family Law Decision-Making' (1994) 22 *Fed-*

'commonsense logic' because any challenge has to demonstrate that 'the taken-for-granted truths' are in fact 'ideological notions which are open to question on empirical and logical grounds'.⁸ Thus, the appeals made by fathers' rights groups to notions like 'the family', 'the caring father', and 'the welfare of the child' are appeals to 'comfortable' images that 'people can readily mobilise to defend'.⁹ Similarly notions of 'equality' and 'rights', as those concepts are understood and used by the groups, contain a 'commonsense logic' that is, at face value, difficult to dispute. In this paper we intend to examine and, in so doing, begin to challenge the 'commonsense logic' within the rhetoric used by fathers' rights groups and its 'norm using' power.

A *The Language of Equality*

Many of the concerns of the fathers' rights movement derive their legitimacy and moral force from charges of 'discrimination' and/or 'bias', and appeals to the principle of equality between men and women, fathers and mothers, and/or non-custodial and custodial parents.

The names of some of the groups reflect their sense that they are formed to fight against discrimination and in favour of equality, for example, 'Dads Against Discrimination' ('DADs')¹⁰ and 'Equality for Fathers'. Men's Confraternity reflects this sense in the formation of its 'Equal Opportunity Sub-Committee'.¹¹ Further examples of the perception that these groups are engaged in a fight against discrimination are some of the slogans that one group recommended fathers place on their protest signs for the 'Masked March against Family Law Injustice', such as 'Children Suffer When Courts Discriminate' and 'Discrimination Leads to Suicide'.¹²

In outlining the major concerns of the fathers' rights movement,¹³ we have documented numerous discrimination arguments around specific issues in family law. These include: the argument that women obtain sole custody¹⁴ of the children in more instances than men because of sex discrimination;¹⁵ the argument that court orders are harshly enforced against men and yet women are

eral Law Review 278; Regina Graycar, 'The Gender of Judgments: An Introduction' in Margaret Thornton (ed), *Public and Private: Feminist Legal Debates* (1995) 262.

⁸ Brown and Hogg, above n 7, 175.

⁹ Sinclair, above n 5, 167.

¹⁰ Interestingly, 'Dads Against Discrimination' in Queensland have changed their name to 'Children and Parents Against Separation'.

¹¹ This committee was responsible for making submissions on behalf of Men's Confraternity to the Australian Law Reform Commission ('ALRC'), *Matrimonial Property*, Report No 39 (1987).

¹² Letter from Peter Vlug (25 February 1997) distributed at the Lone Fathers Association of Australia ('LFAA') Conference, Canberra, 1 March 1997 (letter on file with authors).

¹³ Kaye and Tolmie, above n 1.

¹⁴ Part VII of the *Family Law Act 1975* (Cth) (as amended by the *Family Law Reform Act 1995* (Cth)) has changed much of the terminology (and substance) of parenting orders. In this paper we have tended to use the language of 'custody' and 'access' because that still tends to be the common parlance and the language used by most of the groups. Additionally, many of the groups' submissions upon which we have relied were written prior to the recent amendment.

¹⁵ Many groups argue that this should be redressed by an automatic presumption in favour of shared parenting.

treated very lightly when they breach contact orders;¹⁶ the argument that men, and the women and children from their second marriages, are treated inequitably compared to women and children from first marriages in relation to the payment of child support; the argument that men and women are equally abusive and/or violent and yet only male violence is recognised for the purposes of protection and punishment;¹⁷ the argument that matrimonial property is inequitably divided between men and women; calls for the abolition of spousal maintenance¹⁸ on the basis that women should learn to be financially self reliant, as are men; the claim that men are treated inequitably by the Family Court, counsellors, mediators and the Child Support Agency; the claim that there is inequality in the availability of legal services for men, as opposed to women; and the argument that there is a lack of funding for men's, as opposed to women's, groups.

In general, most Australian fathers' rights groups appear to be claiming that the law has 'swung too far' in favour of mothers, as custodial parents, and now discriminates against fathers, as non-custodial parents.¹⁹ For example, one of the 'Aims & Objectives' of the Men's Rights Agency is

[to] promote equal rights and a level playing field for all men. We acknowledge the right of all women to equality, but over-reaction is causing an imbalance leading to discrimination against men.²⁰

In fact, it is not only in the area of family law that it is suggested that women are being favoured. The Men's Rights Agency states:

Women rights has [*sic*] transcended the original premise of women's equality, which was a just and equitable aim has been overtaken [*sic*] in the pursuit of individual rights for women at all costs.²¹

Likewise, Men's Confraternity says that it is

[c]oncerned about continual attacks on men, led by men hating [*sic*] feminists, who have entrenched themselves in positions of power and influence, in government, media, and education. Their aim is not to obtain equality, but total domination of men at all levels.²²

¹⁶ Suggestions have been made for more punitive measures in respect of the latter.

¹⁷ There is a related argument that women are believed without question when they falsely allege violence and that this results in a discriminatory situation, because innocent men are not believed and are falsely punished on a wholesale level.

¹⁸ Either per se or when it is alleged to be 'masquerading' as child support.

¹⁹ Exceptionally, Men's Confraternity appears to believe that there has *always* been an imbalance of power in favour of women: Men's Confraternity, submission to ALRC, *Matrimonial Property*, above n 11, 1.

²⁰ Men's Rights Agency, 'Aims and Objectives', attachment to 'Speaking for Ourselves: Children and the Legal Process', submission to ALRC, *Seen and Heard: Priority to Children in the Legal Process*, Report No 84 (1997).

²¹ Men's Rights Agency, 'Speaking for Ourselves', submission to ALRC, *Seen and Heard*, above n 20, 5.

²² Letter from M Ward, Men's Confraternity (received by ALRC, 11 December 1985), attachment to submission to ALRC, *Matrimonial Property*, above n 11 (letter on file with authors). A spokesperson from Parent Without Partners proffered his opinion, in discussion with our research assistant, that '[b]loody feminists run the state and the federal government': Parent Without Partners, communication with research assistant (notes on file with authors).

Attitudes like these have led some commentators to state that fathers' rights groups may be viewed as part of a larger backlash against feminism and the developments towards equality made by women.²³

Most, if not all, of the discrimination claims made by fathers' rights groups (even when they are based on accurate data)²⁴ are founded on a simplistic and 'formal' concept of equality: that is, the notion that equality means treating everyone identically. This equality rhetoric, as used by fathers' rights groups, is powerful because it appeals to deep and commonly held values, and does so by what appears to be simple and obvious logic — if people are treated differently (according to their gender) then by definition they are not treated equally.

In fact, feminists now recognise that utilising the concept of formal equality (sometimes referred to as 'gender neutrality') in the context of family law is unlikely to produce equality in practice. This is because such a concept may enhance existing inequality based on actual and gendered difference.²⁵ Gender equality arguments are generally couched as arguments that men and women should be equally treated according to standards developed from the life experiences of men, when in fact they are differently situated. In particular, formal equality rhetoric tends to discount the fact that in the vast majority of Australian families, women are still primarily responsible for the children and generally have less economic power than any man with whom they live.²⁶ Karen Munro expresses this as follows:

Formal equality arguments do not recognize that women are the childbearers, and for the most part in today's world, the childrears. Thus, any move towards fair treatment must account for these differences in life experience of women and men. Formal equality arguments obliterate the important and significant work traditionally and generally done by women in the private sphere. Equality is measured only by standards determined by the public sphere; that is, male standards.²⁷

²³ Karen Munro, 'The Inapplicability of Rights Analysis in Post-Divorce Child Custody Decision Making' (1992) 30 *Alberta Law Review* 852, 864; Martha Fineman and Anne Opie, 'The Uses of Social Science Data in Legal Policymaking: Custody Determinations at Divorce' [1987] *Wisconsin Law Review* 107, 116. Cf Richard Collier, "'Coming Together?': Post-Heterosexuality, Masculine Crisis and the New Men's Movement' (1996) 4 *Feminist Legal Studies* 3, 32, 41 who suggests that this is 'initially appealing', but goes on to suggest that fathers' rights groups 'defy being understood through reference to the "backlash" thesis'.

²⁴ A number of claims are not based on accurate data: see below Part II(E). See generally Kaye and Tolmie, above n 1, 52–3.

²⁵ See, eg, Juliet Behrens, 'Shared Parenting: Possibilities ... and Realities' (1996) 21 *Alternative Law Journal* 213, who comments on the fact that issues of social and economic inequality and power imbalances in domestic relations are not taken into account in the amended provisions of the *Family Law Act 1975* (Cth).

²⁶ Naomi White, 'About Fathers: Masculinity and the Social Construction of Fatherhood' (1994) 30 *Australian and New Zealand Journal of Sociology* 119; Deborah Mitchell, 'Women's Incomes' in Anne Edwards and Susan Magarey (eds), *Women in a Restructuring Australia: Work & Welfare* (1995) 79; Regina Graycar, 'Matrimonial Property Law Reform: What Lessons Have We Learnt?' in *Enhancing Access to Justice* (Papers of the Family Court of Australia 2nd National Conference, Family Court of Australia, Melbourne, September 1995) 91, 94–5; Kathleen Funder, 'Relative Poverty: Family and Child Perspectives' in *Enhancing Access to Justice* (Papers of the Family Court of Australia 2nd National Conference, Family Court of Australia, September 1995) 331, 331–2.

²⁷ Munro, above n 23, 882.

One illustration of the point we are making here is in the discussion surrounding child support. Almost all of the fathers' rights groups that address this issue submit that the present system is inequitable because custodial parents (generally women), and non-custodial parents (generally men), do not have their income equally taken into account for the purposes of assessment under the child support formula. In consequence, in most cases they are unlikely either to pay equal amounts of money or equal proportions of their income for the support of their children. For example, the president of the Lone Fathers Association of Australia, Barry Williams, comments that:

The income disregard levels below which child support is not paid [by non-custodial parents] or above which the rates received are reduced [for custodial parents] should be exactly *the same*, if the system as a whole ... is to operate fairly ... It is a fundamental principle that equity requires that *all* income of the different parties be taken into account *equally*.²⁸

This difference in financial liability, with the resident parent contributing less by way of financial support, is in fact an attempt by the legislature to recognise the non-financial contribution made by that parent in terms of their daily labour of caring for the children.²⁹ The effect of measuring equity solely in terms of the financial contributions made towards the support of the children is to render this actual work of caring, generally performed by women, unvalued and invisible.³⁰ Linda Hancock comments that the concept of gender neutrality is irrelevant and inappropriate in the context of child support laws because

men and women are differentially situated both within marriage and divorce, principally in terms of the unpaid and unquantified caring role taken dispropor-

²⁸ Barry Williams, LFAA Conference, Canberra, 1 March 1997 (papers on file with authors) (emphasis in original). Campaign for Men's Rights also comment, in their submission to the Joint Select Committee on Certain Family Law Issues, that:

The Child Support Agency has become one of Australia's most discriminating government authorities. The practical result of this agency has been to throw 90% of all divorced men in Australia into poverty. This agency has done more to create a new class of poverty in Australia than any recession has done.

Campaign for Men's Rights, submission to the Joint Select Committee on Certain Family Law Issues, *Child Support Scheme: An Examination of the Operation and Effectiveness of the Scheme* (1994) 1.

²⁹ Marilyn Smith, 'Child Support Guidelines: Emerging Theories of Child Support' in *Child Custody, Support and Sexual Abuse Allegations in Divorce Litigation* (1987), cited in supplementary submission by Department of Social Security to Joint Select Committee on Certain Family Law Issues, *Child Support Scheme*, above n 28; Margaret Harrison, 'The Australian Child Support Scheme: Practicalities' in John Eekelaar and Petar Sarcevic (eds), *Parenthood in Modern Society: Legal and Social Issues for the Twenty-first Century* (1993) 533, 538.

³⁰ LFAA (Newcastle-Hunter) is the only group that we are aware of which addresses the reason for the difference in the child support formula. It proceeds to dismiss, however, the idea that the custodial parent's work should be recognised in relation to child support by saying that the non-custodial parent would have been happy to have done this work had they not been prevented from doing so by the custody arrangements. These custody arrangements, we might add, are negotiated in most cases by fathers with the mother. Letter from Clayton Stellmaker, LFAA (Newcastle-Hunter) (received by ALRC, 27 July 1993), attachment to submission to the Joint Select Committee on Certain Family Law Issues, *Child Support Scheme*, above n 28, 4.

tionately by women and rarely factored into arguments about cash transfers or income derived through waged work.³¹

Another illustration of the point we are making about formal equality is found in the argument that men are discriminated against because mothers are awarded sole custody of children in more cases than fathers. As far as we are aware, none of the groups acknowledge the fact that the gender disparity in custody arrangements reflects the reality that in most families it is still women who are primarily responsible for the actual day to day work of child care prior to separation.³² Here, for the groups, the idea that both men and women equally have the *capacity* for child care is of greater importance than looking at who actually undertakes the child care. Interviewing men and women post-separation has prompted Carol Smart to suggest that fathers involved in custody or residence disputes generally talk in terms of caring *about* their children, whilst mothers generally talk in terms of caring *for* their children. As men's projected capacity to care is treated as carrying the same moral weight as the actual activity of caring, 'many of [the] fathers could not see the moral claim that mothers might have arising out of the work of "caring for" children.'³³

Indeed, it is apparent from their rhetoric that nurturing or 'caring for' is actually seen as suspect by some fathers' rights groups because it is gendered behaviour which gives the mother an 'advantage' over the father in custody disputes.³⁴ The Lone Fathers Association states that 'preference is given to mothers in custody cases because they are daily care givers and they know how to tune into Sesame Street'.³⁵ It comments, with sarcasm, that this is a 'very noble conviction'.³⁶

It is ironic that the strategies employed by fathers' rights groups to formulate and present their concerns have, at a number of points, distinct parallels with early feminist thought.³⁷ Nowhere is this more evident than in their claims of

³¹ Linda Hancock, 'The Child Support Scheme Review: Recasting Relationships between Custodial and Non-Custodial Parents and the State' (1997) 13(1) *Liberty* 174, 178.

³² Nor do most of the groups recognise that most custody arrangements are not the subject of dispute.

³³ Carol Smart, 'The Legal and Moral Ordering of Child Custody' (1991) 18 *Journal of Law and Society* 485, 498. She argues that we need to see the activities of 'caring for', not as something outside the moral realm, but as a moral practice. Smart, 'Losing the Struggle for Another Voice', above n 3, 177 also comments that mothers' actions in 'caring for' are seen to be as normal as breathing and hardly acknowledged, '[b]ut when fathers articulated their care about their children, even if they had never really cared for them, their utterances seemed to reverberate around the courts with a deafening significance.'

³⁴ Martha Fineman, *The Neutered Mother, the Sexual Family and Other Twentieth Century Tragedies* (1995) 82. Munro, above n 23, 865 comments that while fathers' rights groups 'claim to be acting for fathers in general there is no mention of policy change which would encourage sharing of parenting in intact families.'

³⁵ LFAA (Rockhampton), 'Family Court: Accident or Design', submission to the Joint Select Committee on Certain Aspects of the Operation and Interpretation of the Family Law Act, *The Family Law Act 1975: Aspects of Its Operation and Interpretation* (1992) 4.

³⁶ *Ibid.*

³⁷ These parallels are evident both in form, and superficially at least, in content. Obvious parallels in form are the use of a gender neutrality equality analysis, the use of rights arguments and challenges to abstract reified discourse by means of using personal stories. More parallels exist in the appropriation of the experiences of other oppressed groups: see the critique of the early American feminist movement in bell hooks, *Ain't I a Woman: Black Women and Feminism* (1981) 141-3. Similarities in content include the exploration of areas in which women have

discrimination and calls for gender equity. Ngaire Naffine has identified three stages of reflection in feminist legal literature.³⁸ The first-phase or 'first-wave' is epitomised by the phrase 'male monopoly' which is concerned with the fact that law is peopled by men and therefore biased in their favour; the second-phase ('the male culture of law') concentrates on the law's inherent masculinity; the third-phase ('legal rhetoric and the patriarchal social order') 'challenge[s] the very concepts law invokes to defend itself as a just and fair institution.'³⁹ In our opinion, any parallels between feminist thought and the fathers' rights movement are restricted to 'first-wave' feminism, that is, 'the argument that in differentiating between men and women, law actively disadvantaged women'.⁴⁰ As we have demonstrated, the arguments put forward by many fathers' rights groups in Australia seem to reduce to a mirroring of this position:⁴¹ that is, the Australian family law system, in its effect, is differentially treating and therefore actively disadvantaging men, and that justice would be satisfied by introducing strict formal equality between the sexes.

However, the fathers' rights movement in Australia is presently unable to progress beyond a partial mirroring of the level of discourse associated with 'first-wave' feminism. To do so would, at the very least, require acknowledging that the politics of formal equality are unsatisfactory and would mean coming to terms with women's inequality.

B *The Language of Rights*

Coltrane and Hickman have noted that the term 'fathers' rights' reflects the fact that the groups repeatedly advance claims based on the language of entitlement.⁴² The names of some of the Australian groups, such as 'Men's Rights Agency', 'Parent Without Rights' and 'Campaign for Men's Rights', also reflect this fact. Barry Williams of the Lone Fathers Association says that the 'underlying concern of fathers is their lack of social or legal rights when it comes to their own children and homes.'⁴³

traditionally experienced victimisation and calls for a breakdown of traditional gender roles, including a reinvention of fatherhood. In spite of these parallels there are obviously major points of divergence between fathers' rights groups and early feminist thought. Just one of the divergences is to be found in the aims and objectives of the fathers' rights movement. Arguably, these strategies are employed in order to consolidate or retain power over, and control of, women and children, rather than operating as devices to obtain empowerment or a qualitative change in relationships with women and children.

³⁸ Ngaire Naffine, *Law and the Sexes: Explorations in Feminist Jurisprudence* (1990). See also the three stages or 'waves' of feminist theory identified by Carol Smart, 'The Woman of Legal Discourse' (1992) 1 *Social & Legal Studies* 29, 30-4.

³⁹ Naffine, above n 38, 2.

⁴⁰ Smart, 'The Woman of Legal Discourse', above n 38, 31.

⁴¹ Martha Fineman, *The Illusion of Equality: The Rhetoric and Reality of Divorce Reform* (1991) 81. See also, Fineman, *The Neutered Mother*, above n 34, 82.

⁴² Scott Coltrane and Neal Hickman, 'The Rhetoric of Rights and Needs: Moral Discourse in the Reform of Child Custody and Child Support Laws' (1992) 39 *Social Problems* 400, 403. For further examples of masculinist discourse of rights, see Terry Arendell, 'The Social Self As Gendered: A Masculinist Discourse of Divorce' (1992) 15 *Symbolic Interaction* 151.

⁴³ Barry Williams, quoted in Mark Abernethy, 'Paternity Wars: In Australia, Divorce Is a Battle Men Can't Win', *Penthouse* (Sydney), April 1993, 35, 38.

There are many specific rights claims in the fathers' rights material. For example, the Child Support Action Group says that the child support scheme ignores or infringes individual rights, such as the 'right of ownership', the 'right to work ... [and] to enjoy the rewards that follow', and the 'right to dignity'.⁴⁴ They also consider that the scheme infringes parental rights to decide 'how to bring up your children and live your life'.⁴⁵ This latter claim is an illustration of what some groups appear to conceptualise as a general right to parent, which is vested in fathers and constrained by divorce and the family law system.

Regina Graycar has noted that 'the most common way in which equality claims are channelled into legal discourse is through the language of "rights"'.⁴⁶ Hence it is not always possible to separate the rhetoric of equality from the rhetoric of rights. There are many instances where rights arguments and equality arguments can easily be, and are, used interchangeably. For example, the promotion of joint custody as the solution to disputes about residence and contact could be seen as a claim for equal rights in relation to the children. DADs paraphrases the argument that it is inequitable that women tend to get sole custody of the children into a rights argument when it says that the 'non-custodial parent has a right to actively bring up the children too'.⁴⁷ Another example is in relation to child support. As we have noted previously,⁴⁸ the claim that children and spouses from second marriages should be treated equally with those from first marriages under the child support formula⁴⁹ is readily paraphrased as an argument that men have the right to remarry and have further children.

Rights claims have been criticised from many perspectives.⁵⁰ One is that such claims are essentially indeterminate and meaningless. This point can be illustrated

⁴⁴ Child Support Action Group (Vic), submission to the Joint Select Committee on Certain Family Law Issues, *Child Support Scheme*, above n 28, 6.

⁴⁵ Ibid. The Family Law Reform Party expand on this notion: See below n 126 and accompanying text. DADs (Qld) similarly submits that the scheme is 'a gross disrespect for human rights': DADs, submission to the Joint Select Committee on Certain Family Law Issues, *Child Support Scheme*, above n 28, 5.

⁴⁶ Regina Graycar, 'Equal Rights Versus Fathers' Rights: The Child Custody Debate in Australia' in Carol Smart and Selma Sevenhuijsen (eds), *Child Custody and the Politics of Gender* (1989) 158, 173.

⁴⁷ DADs, submission to the Joint Select Committee on Certain Aspects of the Operation and Interpretation of the Family Law Act, *The Family Law Act 1975*, above n 35, 5.

⁴⁸ Kaye and Tolmie, above n 1, 47-8. See generally Selma Sevenhuijsen, 'Justice, Moral Reasoning and the Politics of Child Custody' in Elizabeth Meehan and Selma Sevenhuijsen (eds), *Equality Politics and Gender* (1991) 88.

⁴⁹ The argument of unequal treatment is based on the fact that the child support liabilities in relation to the first children will inevitably be more than the amount which the formula disregards from assessment because the liable parent has other children as dependants. Arguments that this is unfair tend to ignore the fact that the liable parent is not confined to spending the exempted amount on their second family children. The liable parent also has all their income (after they have discharged their child support liabilities in respect of their first family children) to spend on their second family children.

⁵⁰ There is a large literature on the 'politics of rights'. A useful starting point to this literature might be Didi Herman, 'Beyond the Rights Debate' (1993) 2 *Social & Legal Studies* 25. In that article, Herman discusses the use of rights rhetoric by the Right. See also Didi Herman, '(Il)legitimate Minorities: The American Christian Right's Anti-Gay-Rights Discourse' (1996) 23 *Journal of Law and Society* 346. For a clear summary of the criticisms of rights, see Sarah Pritchard, 'The Jurisprudence of Human Rights: Some Critical Thought and Developments in Practice' (1995) 2(1) *Australian Journal of Human Rights* 3.

by looking at some of the insoluble questions raised by the rights claims made by fathers' rights groups. Questions such as: What authority are these 'rights' based on? On what basis does one determine their content when it comes to applying the abstract claim to any specific given situation? What criteria are to be used in determining priority when such 'rights' come into conflict with 'rights' held by opposing interests? Another criticism of rights claims is that they necessarily entail a very abstract and reified level of discussion. Selma Sevenhuijsen makes a similar suggestion when referring to the distinction we describe above between the actual work of caring and the capacity to care. She argues that focusing on the capacity to care as opposed to the actual specifics of caring 'can have the effect of strengthening abstract individualism in legal discourse.'⁵¹ By 'implication, justice [for fathers] becomes conceptualized solely in terms of "rights".'⁵² A related point is the criticism some Critical Legal Studies scholars⁵³ make of the fact that rights are necessarily formal and insubstantive.⁵⁴ Finally, rights discourse in the context of family law has been criticised as being rooted in ideology which is founded on a 'property model', hence implicitly using concepts like 'ownership, entitlement, interest and control.'⁵⁵

In spite of such scholarly criticisms, however, the language of rights appears to carry a persuasive appeal in most public forums. Such language is an evocative part of the vocabulary of justice and is therefore a powerful vehicle for the public expression of grievance. Rights rhetoric can be used by both conservative and progressive forces.⁵⁶ Rights claims may, however, be particularly appropriate for

⁵¹ Selma Sevenhuijsen, 'The Gendered Juridification of Parenthood' (1992) 1 *Social & Legal Studies* 71, 80.

⁵² Ibid.

⁵³ Feminist critiques of rights have likewise questioned whether the concept of rights can ever advance women's substantive as opposed to formal equality: see generally Judy Fudge, 'The Public/Private Distinction: The Possibilities of and the Limits to the Use of Charter Litigation to Further Feminist Struggles' (1987) 25 *Osgoode Hall Law Journal* 485; Carol Smart, *Feminism and the Power of Law* (1989) 138-59; Jenny Morgan, 'Equality Rights in the Australian Context: A Feminist Assessment' in Philip Alston (ed), *Towards an Australian Bill of Rights* (1994) 123.

⁵⁴ See, eg, Didi Herman, 'Are We Family? Lesbian Rights and Women's Liberation' (1990) 28 *Osgoode Hall Law Journal* 789, 805.

⁵⁵ Sevenhuijsen, 'Justice, Moral Reasoning and the Politics of Child Custody', above n 48, 92. Thus Sevenhuijsen comments that, in the context of child custody, '[c]hildren are perceived as entities to be possessed and the law has the duty to guarantee entrance to them against the interests of others'. She goes on to say '[w]hen we take into account the context, in which rights are claimed by fathers' rights movements, we can see that this claim is predominantly based on a concept of possessive power. Rights are placed in position to enforce contacts with children and control women's lives': Sevenhuijsen, 'Justice, Moral Reasoning and the Politics of Child Custody', 98. A related argument is that rights have been traditionally expressed almost exclusively as a male prerogative. Selma Sevenhuijsen, 'Fatherhood and the Political Theory of Rights: Theoretical Perspectives of Feminism' (1986) 14 *International Journal of the Sociology of Law* 329, 336, suggests the need for a legal recognition of the difference between nurturing and legal rights and comments that '[w]hereas women/mothers have had a long tradition of denial of "rights" in relation to autonomous decision-making concerning children, the definition of manhood and fatherhood as a set of rights has hardly seen any rupture.'

⁵⁶ Judy Fudge, 'The Effect of Entrenching a Bill of Rights upon Political Discourse: Feminist Demands and Sexual Violence in Canada' (1989) 17 *International Journal of the Sociology of Law* 445, 449; Didi Herman, *Rights of Passage: Struggles for Lesbian and Gay Legal Equality* (1994) 64.

fathers' rights groups who, as we have argued above, are primarily making a claim for formal, as opposed to substantive, gender equality.

C *Claims to Victim Status*

Many fathers' rights groups lend moral force to their arguments by adopting the rhetoric of victimisation in describing their claims. The most obvious way in which they claim victim status is in their use of the explicit language of victimisation.⁵⁷

Sometimes this language is linked with pleas for improved gender equity. Thus men are portrayed as the 'victims' of feminism which has gone 'too far' in unbalancing hitherto 'equal rights'. Barry Williams of the Lone Fathers Association makes a link between allegations of inequality and victimisation when he says that the group wants 'equality for both sexes on the subject of domestic violence. Men are victims too.'⁵⁸ Inequality and victimisation are linked, as victimisation is arguably necessary before inequality has any kind of moral or ethical charge. Thus, Bumiller has argued that '[i]n order for an individual to press a claim that unfavourable treatment stems from discriminatory practices she must assume the role of the victim.'⁵⁹

Often, however, the language of victimisation used by fathers' rights groups is not expressly linked with inequality or discrimination claims, but instead with a general sense that men are casualties of the family law system. For example, the Lone Fathers Association claims that non-custodial parents are the victims of family law and child support legislation in the following terms:

[I]s it realistic to expect that non-custodial parents who are intentionally *victimised* as documented by the research and anecdotal evidence, will continue to joyfully pay up throughout five, ten or fifteen years of such *victimisation*?⁶⁰

A powerful device in building a claim to victim status, whether or not it is explicitly supported by the language of victimisation, is the minimisation or removal of any sense that men or non-custodial parents have agency in their lives.⁶¹ An obvious example of this technique emerges in discussions of residence and contact. Men are presented by most fathers' rights groups as overwhelmingly being denied custody of the children. It is very rare for groups to address the fact that, in the majority of cases, this was because the father had voluntarily relinquished it, as opposed to having lost it by means of a court order. Even those groups which do acknowledge this fact assign a number of causes to the fathers' relinquishment of custody, such as misinformation by lawyers, restraining orders, the threat of being denied access or

⁵⁷ Eva Cox, *Leading Women: Tactics for Making the Difference* (1996) 221 has referred to a 'competing victim syndrome' being part of the public debate in Australia.

⁵⁸ Barry Williams, quoted in Roy Dillon, 'Shafted! Are Australia's Domestic Violence Laws Destroying Innocent Men?', *Penthouse* (Sydney), April 1997, 29, 32.

⁵⁹ Kristin Bumiller, 'Victims in the Shadow of the Law: A Critique of the Model of Legal Protection' (1987) 12 *Signs: Journal of Women in Culture and Society* 421, 433.

⁶⁰ LFAA, 'Speaking for Ourselves', submission to ALRC, *Seen and Heard*, above n 20, 99 (emphasis added).

⁶¹ For further discussion of how focusing on victimisation can undermine the capacity for choice and agency, see Martha Minow, 'Surviving Victim Talk' (1993) 40 *University of California Los Angeles Law Review* 1411, 1427.

the legal expenses of contesting custody — all factors outside the power of and acting upon the men concerned. As far as we are aware, no fathers' rights groups concede that when men do contest custody they are successful in a substantial number of cases.⁶²

The most extreme example of fathers' rights groups rendering men's agency invisible occurs in respect of domestic violence, which is overwhelmingly perpetrated by men.⁶³ Most groups do not present such violence as the responsibility of the perpetrator. Instead the violence, including murder, is presented as something *caused* in men by intolerable circumstances and therefore evidence of their victimisation by those circumstances. For example, Parent Without Rights says:

If our pleas had been heeded, regarding the problems with the denial of access orders, there may have been a few more children, and their fathers, still alive today ... Fathers, who in these situations, have no weapon, can easily be pushed emotionally over the edge ... This has led to tragedies such as bitterness, violence and a large number of murder-suicides.⁶⁴

One of the most problematic techniques used to claim victimisation is that of 'borrowing victim status'. In other words, drawing analogies between non-custodial fathers and extremely oppressed groups, in particular, Aboriginal people.⁶⁵ For example, when elaborating on the phenomenon of men murdering their children and/or their ex-partner and then themselves, Parent Without Rights submits that:

Mr Justice Nicholson has stated on television that those fathers who resort to murder-suicides are deranged, or mentally disturbed. I wonder if he would make the same statement publicly about those Aborigines who commit suicide while in custody?⁶⁶

Another technique supporting claims to victimisation for fathers is the painting of the 'opponents' of the fathers' rights movement as possessing enormous power. For example, some groups go so far as to suggest that there is a conspiracy

⁶² See generally Frank Horwill and Sophy Bordow, 'The Outcome of Defended Custody Cases in the Family Court of Australia' (Research Report No 4, Family Court of Australia, 1983); Sophy Bordow, 'Defended Custody Cases in the Family Court of Australia: Factors Influencing the Outcome' (1994) 8 *Australian Journal of Family Law* 252.

⁶³ Judy Putt and Karl Higgins, *Violence against Women in Australia: Key Research and Data Issues* (1997) xi.

⁶⁴ Parent Without Rights, 'Intractable Access', submission to ALRC, *For the Sake of the Kids: Complex Contact Cases and the Family Court*, Report No 73 (1995) 1–2. See also LFAA, 'Speaking for Ourselves', above n 60, 24; Men's Confraternity, 'Shattering the Myth', submission to the Western Australian Domestic Violence Task Force, *Break the Silence: The Report of the Domestic Violence Task Force to the WA Government* (1986) 40.

⁶⁵ See the similar tactics of Warren Farrell in *The Myth of Male Power: Why Men Are the Disposable Sex* (1994) especially 38–41. Martin Mills, 'Wild Men: Looking Back and Lashing Out' (1997) 16(4) *Social Alternatives* 11, 14 notes that Farrell 'constantly seeks to equate the social positioning of oppressed groups with that of men'.

⁶⁶ Parent Without Rights, 'Intractable Access', above n 64, 2. Another example of such a comparison is the LFAA comment below at text accompanying n 107. Commissioner Elliott Johnston, *National Report: Royal Commission into Aboriginal Deaths in Custody* (1991) vol 1, 6 found that 'the Aboriginal population is grossly over-represented in custody.' The Royal Commission pointed to numerous historical and structural problems as the underlying causes of the over-representation of Aboriginal people in custody.

surrounding the issue of violence. To this effect, Men's Confraternity argues that the report of the 1986 Western Australian Domestic Violence Task Force was produced by feminists who want to 'gain ... more punitive and repressive physical and psychological control over men whom they wish to exploit.'⁶⁷ To the same effect, the Men's Rights Agency claims that it was subjected to a media vendetta in which it was publicly criticised for its role in the 'Hillcrest murder-suicide'.⁶⁸ The Men's Rights Agency alleges that the 'vendetta' was a direct consequence of arousing the ire of the 'very powerful domestic violence ladies', rather than because of a legitimate media concern about their behaviour in the Hillcrest case.⁶⁹ This case involved Mr Peter May, who managed to find where his wife, children and her parents were hiding and kill them all before killing himself. His wife had fled him in consequence of his violence, and shortly afterwards he had been to see the Men's Rights Agency about his legal position. This organisation had allegedly painted a bleak picture of his chances as a man in the Family Court. After the killings, various accusations were made in the *Courier Mail* (Brisbane) that the Men's Rights Agency was hiring private investigators to help perpetrators track down women who were the targets of domestic violence, and making men who went to them for support despondent and angry by presenting a black picture of their position.⁷⁰

Along similar lines, explanations for the bias some fathers' rights groups document in the family law system are said to be found in the 'capture' of institutions of power within the system by feminists. Men's Confraternity presents the strongest 'capture' argument in respect of the Family Court. It submits that traditionally there was 'matriarchal favouritism' where 'the woman was simply awarded everything whilst the man was evicted with nothing to show for his life'.⁷¹ When the Family Court was set up, it had the potential to rectify this bias, but '[n]ot wanting to lose ground, the feminist elements of society with callous planning and practice have raised formidable [*sic*] barriers to the effectiveness of this ideal.'⁷²

The various methods which feminists have used to obstruct equality are described by Men's Confraternity as including

psychological (provision of masses of literature in counselling areas and other lobbies of the court ...), sandbagging (court clerks failing to prepare subpoenas to witnesses for the men in sufficient time if at all, counsellors creating

⁶⁷ Men's Confraternity, 'Shattering the Myth', above n 64, 13.

⁶⁸ Men's Rights Agency, communication with research assistant (notes on file with authors).

⁶⁹ Ibid.

⁷⁰ Paul Whittaker and Rory Callinan, "'Disney Dad" Killed Children after Holiday of a Lifetime', *Courier Mail* (Brisbane), 27 January 1996, 1; Paula Doneman and Michael Ware, 'Men's Agency Tracks Beaten Wives', *Courier Mail* (Brisbane), 17 August 1996, 1; Paula Doneman and Michael Ware, 'Deadly Weapon', *Courier Mail* (Brisbane), 17 August 1996, 21; Paula Doneman and Michael Ware, 'Police Will Probe MRA Spy Claims', *Courier Mail* (Brisbane), 19 August 1996, 4; Editorial, 'No Male Right to Stalk or Kill', *Courier Mail* (Brisbane), 19 August 1996, 10; Paula Doneman and Michael Ware, 'Lingard Moves on MRA Work', *Courier Mail* (Brisbane), 20 August 1996, 3.

⁷¹ Men's Confraternity, submission to ALRC, *Matrimonial Property*, above n 11, 3.

⁷² Ibid.

a hostile environment towards men, openly telling men that it is worthless to fight for justice) and stacking (encouraging women to make [false] statements in court ... rather than relate the truth about actual events of the marriage and separation).⁷³

This group defines the Family Court as 'the ultimate power structure created by society to perpetuate rigid matriarchal prejudices and maintain the single-mindedness of patriarchy's life purpose'.⁷⁴ Similar 'capture' theories are presented in the context of family legislation. For example, a representative from Parent Without Rights informed our research assistant that minority feminist groups were 'dictating law reform'.⁷⁵

It should be noted here that the groups do not just consider men to be the victims of feminism in its larger sense. Men are also, as individuals, considered to be the victims of individual women who fit within the stereotype of the 'mendacious mother' or the 'alimony drone'. We will discuss these depictions of women further below.⁷⁶

D The Use of Anecdotes

Many of the claims made by fathers' rights groups, particularly as they are described in the popular press, are made by recounting anecdotes.⁷⁷ These are commonly 'atrocity tales'⁷⁸ which detail the injustice suffered by a particular father. For example, the leading article of an edition of *Penthouse* was devoted to the question, 'Are Australia's Domestic Violence Laws Destroying Innocent Men?'⁷⁹ The article consisted of the story of one man who, in his dealings with an ex-partner (whose behaviour, as it is described, raises the suspicion that she might have been suffering some form of mental disturbance) had 'slipped into a legal nightmare'.⁸⁰

Anecdotes are not, however, used only in the popular press. Many of the submissions fathers' rights groups have made to law reform bodies also either use anecdote-

⁷³ Ibid.

⁷⁴ Ibid 19.

⁷⁵ Parent Without Rights, communication with research assistant (notes on file with authors). This notion of capture is implicit in the preamble of Men's Confraternity's submission to the ALRC, *Matrimonial Property*, above n 11, when they say that '[w]e beg you not to be swayed by the feminist movement which will be making their own submissions. Please treat our submission as equal to theirs.'

⁷⁶ See below Part II(H).

⁷⁷ It must be acknowledged that the techniques of the media may encourage the presentation of arguments as anecdotes. There is a need for journalists to 'put a face to a story'. It has been noted that the 'law and news media read the event through the specific individual involved in it': Richard Ericson, Patricia Baranek and Janet Chan, *Representing Order: Crime, Law, and Justice in the News Media* (1991) 344. We have noted, above n 37, that feminists have claimed storytelling as a powerful epistemology. There is a difference between using atrocity tales and using storytelling to illustrate that there may be a multiplicity of standpoints around common events, or using personal stories for consciousness-raising. Clearly the use of storytelling as an epistemology is complex and can be used inappropriately. See also Carol Smart, 'Unquestionably a Moral Issue: Rhetorical Devices and Regulatory Imperatives' in Lynne Segal and Mary McIntosh (eds), *Sex Exposed: Sexuality and the Pornography Debate* (1992) 184, 188.

⁷⁸ To use the terminology of Coltrane and Hickman, above n 42.

⁷⁹ Dillon, above n 58.

⁸⁰ Ibid 29.

tal evidence as the body of the submission, or attach 'stories' from members in appendices to their submissions.⁸¹ For example, a submission by Parent Without Rights to the Joint Select Committee on Certain Family Law Issues used an anecdote to illustrate that the family law system uses trivial or unsubstantiated evidence to discriminate against fathers. They told the story of a father who was subjected to an innuendo of sexual abuse because he was holding his 11 year old daughter's hand when he walked into a counsellor's office.⁸²

Anecdotes allow the groups to present their arguments 'in the form of "stories" that contain powerful images that are readily understood by those not familiar with the ... decisionmaking process.'⁸³ This is a sensible strategy for, as Mark Moore has noted:

[I]t is not clear reasoning or carefully developed and interpreted facts that make ideas convincing. Rather, ideas seem to become anchored in people's minds through illustrative anecdotes, simple diagrams and pictures, or connections with broad commonsense ideologies that define human nature and social responsibilities. These connections cannot be dissolved simply through facts and logic.⁸⁴

Such stories also have power because they arouse an emotional response in the reader. They speak in the moving language of loss and graphically describe situations where men have suffered genuine feelings of hurt.⁸⁵ Their telling gives an air of authenticity to the points they illustrate.⁸⁶ Dramatic currency is also derived from the fact that these 'horror stories' do not present the *normal* case.⁸⁷ Instead they represent the extraordinary or extreme in order to demonstrate the extent of the harm which can be caused by the family law system.

The use of anecdotes as a rhetorical device is an effective vehicle for the promotion and substantiation of ideas in the public forum but it is also highly problematic

⁸¹ For example, DADs advertised for men's stories in *The Daily Telegraph Mirror* (Sydney), 18 May 1991, 104. These stories were attached to DADs' submission to the Joint Select Committee on Certain Family Law Issues, *Child Support Scheme*, above n 28.

⁸² Parent Without Rights, submission to the Joint Select Committee on Certain Family Law Issues, *Child Support Scheme*, above n 28, 11.

⁸³ Martha Fineman, 'Dominant Discourse, Professional Language and Legal Change in Child Custody Decisionmaking' (1988) 101 *Harvard Law Review* 727, 753.

⁸⁴ Mark Moore, 'What Sort of Ideas Become Public Ideas?' in Robert Reich (ed), *The Power of Public Ideas* (1988) 55, 79.

⁸⁵ Research evidence demonstrates that men are physically and mentally disturbed by the divorce process. See, eg, Peter Jordan, 'The Effects of Marital Separation on Men — 10 Years On' (Research Report No 14, Family Court of Australia, 1996); Margaret Harrison, 'Attitudes of Divorced Men and Women to the Family' (Proceedings of the Australian Family Research Conference, Canberra, November 1983) vol 2, 1; Anne McMurray and A Blackmore, 'Influences on Parent-child Relationships in Non-custodial Fathers' (1993) 14 *Australian Journal of Marriage and Family* 151.

⁸⁶ In another context Sinclair, above n 5, 167–8, has commented that:

[I]t is vital to keep in mind that one reason for the success of the backlash ... is the legitimacy of some of their complaints. The concern ... is that while using these respected norms some backlash reports are exaggerated, misrepresent the facts, or are not true.

⁸⁷ This is another reason for media interest in these stories. Jock Young, 'Mass Media, Drugs, and Deviance' in Paul Rock and Mary McIntosh (eds), *Deviance and Social Control* (1974) 229, 241 suggests that the media 'selects events which are *atypical*, presents them in a *stereotypical* fashion and contrasts them against a backdrop of normality which is *overtypical*' (emphasis in original).

and can be dangerously misleading. Specifically, anecdotal accounts of the extraordinary are either represented as, or by repetition and/or prominence achieve the status of, the norm. In other words, the danger is that such horror stories come to have 'created rather than reflected reality.'⁸⁸ Chris Staniforth alludes to this problem when discussing the reasons why it was believed necessary to reform the *Family Law Act 1975* (Cth); the belief was based on 'the logical fallacy that loudly-spoken complaints as to a particular contain necessary truths about the general.'⁸⁹ This problem is compounded when the situated perspective of the storyteller is not acknowledged or problematised⁹⁰ and such stories are presented as an 'objective' account of what actually happened in any individual case.

Some of the groups have acknowledged criticisms directed at fathers' rights groups because of their use of anecdotal evidence. In particular, the Lone Fathers Association notes that the Australian Institute of Family Studies described the evidence used by such groups in criticising the current provisions of the *Family Law Act 1975* (Cth) as 'anecdotal'.⁹¹ They respond to the effect that:

Perhaps if it took the time to use reason, [the Australian Institute of Family Studies] and others would discover that men do not wish to use anecdotes but are forced to because of the denial of funds for empirical research.⁹²

E *The Use of Statistics*

Another feature of the material generated by fathers' rights groups is their frequent use of statistics to substantiate and lend credibility to the claims they are making. Unfortunately the statistics used by such groups are rarely sourced and therefore cannot be checked for accuracy. However when the figures quoted by such groups are compared to those generated by relevant scholarly studies it becomes obvious that they are frequently inaccurate and used for sensational effect. This point can be illustrated by the claims fathers' rights groups make in respect of the gendered division of court ordered custody. Parent Without Rights submits that only five per cent of fathers who are able to reach a full contested hearing of their custody applications are successful.⁹³ Men's Rights Agency claims that, of the men who actually go to court, only 18 per cent are awarded sole custody.⁹⁴ The Lone

⁸⁸ Fineman, 'Dominant Discourse', above n 83, 761. Carol Smart, 'Unquestionably a Moral Issue', above n 77, 188 has stated that the 'personal testimony is given the status of a truth, unless the speaker can be disqualified effectively.'

⁸⁹ Chris Staniforth, 'The Evolution of the Family Law Reform Bill 1994: Some Unresolved Issues' (1995) 2 *Canberra Law Review* 145, 146.

⁹⁰ See generally Martha Minow, *Making All the Difference: Inclusion, Exclusion and American Law* (1990) 97, cited in Sinclair, above n 5, 159.

⁹¹ LFAA (Rockhampton), 'Family Court: Accident or Design', above n 35, 3.

⁹² Ibid. Accordingly some of the groups, such as the LFAA, in their recent submissions have avoided using 'horror stories' and instead have submitted referenced submissions which *read like* academic journal articles. See, eg, LFAA, 'Speaking for Ourselves', above n 60, which was researched by Yuri Joakimidis and comprised 110 pages of footnoted prose plus appendices.

⁹³ Parent Without Rights, submission to the Joint Select Committee on Certain Family Law Issues, *Child Support Scheme*, above n 28, 2.

⁹⁴ Men's Rights Agency, communication with research assistant (notes on file with authors).

Fathers Association claims that 76 per cent of men lose contested custody cases.⁹⁵ At another point they submit that 97.5 per cent of fathers do not succeed in custody matters.⁹⁶ Men's Confraternity claims that '[t]he Court at present awards approximately 90% of child custody to mothers'.⁹⁷ These statistics are unsourced and contradicted by research in the area which suggests that fathers obtain custody of at least one child in 37–41 per cent of contested custody cases.⁹⁸

Another problematic technique of the groups is the generation of their own statistics by means of polling their members.⁹⁹ For example, the Lone Fathers Association interviewed '100 separated or divorced men' (all members of the Lone Fathers Association) to find that 85 per cent had experienced denial of access.¹⁰⁰ It used these figures to support its claim that the main source of continual litigation in family law is the frustration of court ordered access by the custodial parent.¹⁰¹ Another example of this technique is provided by Men's Confraternity in its argument that the child support scheme produces results that discriminate against men.¹⁰² In support of this assertion, it comments that it receives over 150 telephone calls a year regarding the inequities of the scheme, only 10 per cent of which are from women.¹⁰³ Furthermore, it states that only one per cent of those attending the self-help groups run by Men's Confraternity on behalf of themselves, as opposed to male family members, were women.¹⁰⁴ Clearly individuals who contact groups such as the Lone Fathers Association and Men's Confraternity will not be representative of the general population of separated men, let alone women. The figures generated in this way are therefore meaningless, although they may carry weight with those who are not sophisticated enough to have a critical understanding of techniques of data generation.

F *The Conflation of Children's and Fathers' Interests*

Most fathers' rights groups' arguments tend to conflate the interests of children with those of fathers. Thus, the interests of fathers are commonly presented as being aligned with the interests of the children, the latter reinforcing the moral claims of the former. Carol Smart has stated that:

[T]he success of the rights claim made by the fathers' rights movement is based on the fact that it is demanding an equalization of rights with mothers, not

⁹⁵ LFAA, submission to ALRC, *Contempt*, Report No 35 (1987) 4.

⁹⁶ LFAA (Rockhampton), 'Family Court: Accident or Design', above n 35, 2.

⁹⁷ Men's Confraternity, submission to ALRC, *Matrimonial Property*, above n 11, 6.

⁹⁸ Bordow, 'Defended Custody Cases in the Family Court of Australia', above n 62, 261.

⁹⁹ Perhaps a reason for this (and also for the reliance on personal anecdotes) is a perception of bias and/or conspiracy on the part of government institutions, and thus a mistrust of statistics produced by the Australian Family Court or the Australian Institute of Family Studies.

¹⁰⁰ LFAA, submission to ALRC, *Contempt*, above n 95, 6.

¹⁰¹ *Ibid* 4.

¹⁰² Men's Confraternity, submission to the Joint Select Committee on Certain Family Law Issues, *Child Support Scheme*, above n 28, 10.

¹⁰³ *Ibid* 1.

¹⁰⁴ *Ibid* 1–2.

rights over children. Moreover they argue that these rights coincide with the welfare of children.¹⁰⁵

Hence, a demand for regular access to the children or joint parenting arrangements can be reinforced by, or represented as, a claim that children need regular contact with their father and that this is their 'basic human right.'¹⁰⁶ The Lone Fathers Association has stated that:

The best interests of the child in most cultures including Anglo-Saxon/Celtic communities cannot be served by legal processes which weaken relationships between children and non-resident parents — practices which are painfully analogous to the inhumane policy of separating [A]boriginal children from their parents.¹⁰⁷

The assertion that men are more likely to want to pay child support if 'joint custody' is awarded is used to further align children's interests with those of their fathers. According to the Lone Fathers Association:

The data indicate that sole custody awards, as opposed to joint custody determinations, tend to work against the economic best interests of the children in divorce. Clearly, when a court enforces paternal disenfranchisement, that court is decreasing the likelihood of compliance with child support.¹⁰⁸

Similarly, the Family Law Reform Party argues that increased access is the best incentive to encourage fathers to financially support their children.¹⁰⁹ Hence the poor record that fathers have in paying for their children is used to justify giving them joint custody or greater contact with their children. Children's rights or interests in this context are, happily, a corollary of the fathers' rights to equality.¹¹⁰ Martha Fineman has noted in the American context that:

There is ... an interesting intersection of children's- and fathers'-rights discourses, with joint custody emerging as the 'ideal' (fairy-tale) solution for the many problems of the divorced family.¹¹¹

In fact children's interests are rarely explained or explored in any detail in the fathers' rights groups' literature, which tends to assert the content of those

¹⁰⁵ Smart, *Feminism and the Power of Law*, above n 53, 156.

¹⁰⁶ LFAA (Newcastle-Hunter), LFAA Conference, above n 28 (papers on file with authors).

¹⁰⁷ LFAA, 'Speaking for Ourselves', above n 60, 58. The LFAA is equating the situation with that experienced by generations of Australian Aboriginal children, forcibly removed from both parents and their community by the state to effect a policy which has been characterised as a crime against humanity — genocide. See generally Human Rights and Equal Opportunity Commission, *Bringing Them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families* (1997). 'The Mask' from Masked Parents Against Family Court Injustice also states that the pain of non-custodial parents 'is no different than that experienced by the Aboriginal stolen generation': Cydonee Mardon, 'Masked Dads in Justice Fight', *The Macarthur Advertiser* (Campbelltown), 30 July 1997, 16.

¹⁰⁸ LFAA, 'Speaking for Ourselves', above n 60, 99.

¹⁰⁹ Family Law Reform Party, submission to the Joint Select Committee on Certain Family Law Issues, *Child Support Scheme*, above n 28, 25.

¹¹⁰ Munro, above n 23, 866.

¹¹¹ Fineman, *The Illusion of Equality*, above n 41, 5. For an excellent illustration of the 'fairy-tale' of shared parenting, see the cartoon by Tania Walden, 'The Family Law Act Fairytale' in Behrens, above n 25, 215.

interests without substantiation. One of the criticisms Karen Munro offers of a rights based analysis of the law regulating custody is that the interests of children are only referred to indirectly within this discourse. She comments that:

The right of the child [to have contact with both parents] is not stated as anything but a concept. There is no presentation of cogent argument as to why such equal rights are actually in the best interests of the child, nor why children benefit from the equal contact which is deemed to be probable under joint custody ... The benefit to the children is assumed; in fact, many of the articles are written without any references at all to actual children.¹¹²

Because of the manner in which most of the groups choose to characterise the interests of the children, they avoid explicitly confronting the issue of whose interests should prevail when fathers' interests are potentially in conflict with the interests of the children. For example, the Lone Fathers Association has suggested that where allegations of abuse are made in family law proceedings, the '[accused] parent's interest in defending himself/herself should *at least* rise to a position equal to the interests of the child.'¹¹³ This would appear to conflict with the principle that the best interests of the child should be the paramount consideration in making any parenting order.¹¹⁴ However, the Lone Fathers Association attempts to demonstrate that this is not the case, for they say that '[t]he best interest standard ... would not be compromised, but furthered, by a stricter recognition of parental rights in sexual and physical abuse cases.'¹¹⁵ They explain that '[w]e can never serve a child's best interest by denying that child the love and affection of a parent, who like the child, has been victimised by a lie.'¹¹⁶

There is an irony here. At face value the device of characterising children's interests in such a fashion that they are conflated with the interests of fathers may operate to disguise the reality that for many of these groups, as Richard Collier suggests, '[c]hildren come first ... apart from when their interests conflict with those of men.'¹¹⁷ Yet the use of this device in itself suggests a prioritising of fathers' interests over the interests of children. It is the children's interests which are described in such a way as to align them with fathers' interests in circumstances of potential conflict between the two, and not vice versa.

Contrary to some of the caring rhetoric, and implicit in the discussion of a number of these groups, is a general and rather frightening eradication of the sense that children are people who have needs which they are unable to meet themselves and which might conflict with those of their parents. Rarely present in the submissions of these groups is the sense that responsible and adult parenting might mean sacrificing one's own immediate interests as an individual to meet the needs of one's children. An example that emerges from material generated by the groups is the sense that child support is payment for access and therefore

¹¹² Munro, above n 23, 866.

¹¹³ LFAA, 'Speaking for Ourselves', above n 60, 57 (emphasis added).

¹¹⁴ *Family Law Act 1975* (Cth) s 65E.

¹¹⁵ LFAA, 'Speaking for Ourselves', above n 60, 57.

¹¹⁶ *Ibid.*

¹¹⁷ Collier, 'Coming Together?', above n 23, 28.

should be withdrawn if the non-custodial parent does not get access to their children.¹¹⁸ We are not saying that it is not in the best interests of most children to have access to their fathers, or that frustration of court ordered access is not a serious matter, but rather that withdrawing or even threatening to withdraw the child's *means of survival* because one's own needs are not being met is not responsible parenting. Other examples of the disappearance of children's needs include:¹¹⁹

- suggestions that prioritise the prevention of false allegations of child abuse over safeguards put in place for genuine victims of such abuse;
- suggestions that if children decide that they don't want access to the non-custodial parent then there should be an assumption that they have been brain-washed by the custodial parent, whereby automatic reversal of custody should ensue; and
- expressions of sympathy for men who are so distressed by their loss of access to the children they purportedly love that they *murder* the objects of their affection!

Only a few fathers' rights groups explicitly acknowledge that the interests of children and fathers may not always coincide. These groups argue that inequity in family law comes not just from favouring the custodial parent over the non-custodial parent, but from favouring the children over the parents or the family unit. Such groups explicitly argue that the importance of the best interests of the child might need to be rethought in some circumstances. Equality for Fathers, for example, suggests that the best interests of the child should be paramount 'but not at any cost.'¹²⁰ Speaking in the context of the child support scheme, they claim that '[t]he current set of laws has acted against the human rights of Australian fathers in the name of "the best interests of the children".'¹²¹

G *The Protection of the Family*

A number of fathers' rights groups base their submissions on a rhetorical appeal to the concept of the family.¹²² For example, the Family Law Reform Party says:

The Family has been described as the corner stone of Society, Human effort to organise Society is based on the Family, without the Family, society has no meaning, Families provide the shelter, support, nurture [*sic*] and company that all people strive for.¹²³

¹¹⁸ Kaye and Tolmie, above n 1, 49.

¹¹⁹ We elaborate on these examples in Kaye and Tolmie, above n 1.

¹²⁰ Equality for Fathers, submission to the Joint Select Committee on Certain Family Law Issues, *Child Support Scheme*, above n 28, 2 (emphasis in original). The Family Law Reform Party suggest that any decisions in family law must be made 'in the interests of the total Family Unit, not just the Child of the marriage or Relationship.' Family Law Reform Party, submission to the Joint Select Committee on Certain Family Law Issues, *Child Support Scheme*, above n 28, 23.

¹²¹ Equality for Fathers, submission to the Joint Select Committee on Certain Family Law Issues, *Child Support Scheme*, above n 28, 2.

¹²² Kaye and Tolmie, above n 1, 27–32.

¹²³ Family Law Reform Party, 'The Family', <<http://www.gil.com.au/~famlaw/>> (at 18 November 1997). As Jenni Millbank has pointed out, this 'view is widespread, and appears in many legal

Almost all of these appeals are couched in terms of the need to defend the family against threats presented to it by different forces in society. The concept of the family, and its threatened status, are both reflected in the name change of the Queensland branch of the group 'Dads Against Discrimination' to 'Children and Parents Against Separation'.

Some of these threats to the family, it is argued, are from private (as opposed to state) sources, such as feminists, lesbians and gay men. A representative of the Queensland Family Law Reform Party told the Lone Fathers Conference participants that:

[D]emands by Lesbian and homosexual [*sic*] to be regarded as families have encouraged women to leave their Husbands, to seek greater independence by easy access to Government handouts.¹²⁴

Such arguments obviously utilise the distrust within various segments of society towards groups with 'other' or 'outsider' status. In particular, lesbianism could also be considered by these groups to be symbolic of the ultimate identification with female interests, and a corresponding lack of connection to and care for men and their interests.

It is argued that some of these 'threats' come from the state, manifest in institutions like the court, family law legislation, and the social security system. For example, welfare provisions which provide women with means of support independent from their male partners are seen as damaging to the family. The Family Law Reform Association considers that '[t]here is something inherently wrong in a society that hands people incentives for the breaking up of a family unit'.¹²⁵

In its most extreme form, this argument about the threatened status of the family is linked to the advent of socialist influences. Groups question whether the state (social security) is raising children rather than fathers.¹²⁶ Men's Rights Agency clearly demonstrates the fear that men are being made disposable by the state when they say that the

[g]overnment has now, by its policies taken over the role of men and is now acting as defacto husband in relation to providing support for women and as defacto father in supporting children of the relationship.¹²⁷

forums, both implicitly and explicitly. See for instance the International Covenant on Civil and Political Rights (Art 23(1)) and the Family Law Act 1975 (Cth) (s 43(b)) which both assert that "the family" is "the natural and fundamental [group] unit of society": Jenni Millbank, "Which, Then, Would Be the 'Husband' and Which the 'Wife'?: Some Introductory Thoughts on Contesting "the Family" in Court' (1996) 3(3) *E Law – Murdoch University Electronic Journal of Law* <<http://www.murdoch.edu.au/elaw/issues/v3n3/millbank.html>> [6].

¹²⁴ Barry Weedon, Family Law Reform Party, LFAA Conference, above n 28 (papers on file with authors).

¹²⁵ Family Law Reform Association, submission to the Joint Select Committee on Certain Family Law Issues, *Child Support Scheme*, above n 28, 4.

¹²⁶ Family Law Reform and Assistance Association, submission to the Joint Select Committee on Certain Family Law Issues, *Child Support Scheme*, above n 28, 15.

¹²⁷ Men's Rights Agency, 'Speaking for Ourselves', above n 20, 3.

The Lone Fathers Association claims that family law is 'neo-Marxist'.¹²⁸ They say that:

If [Lionel Murphy's]¹²⁹ efforts were aimed at bringing about ... Marxist reforms ... then, it seems he has partially succeeded, the cost of this partial success however, has to be counted in severed parent child relationships, broken human spirits and most unacceptably the dead bodies of children and adults.¹³⁰

Another extreme version of this argument is the link some groups make between fascism and the family law system:

That this government has sought to overcome the deficiencies of family Law by adopting GESTAPO type tactics via the Child Support Act is irresponsible in the extreme. It renders government no better than organised crime in imposing its will on the citizens of this country.¹³¹

Whether or not links are explicitly made with fascism or socialism there is a sense in all of the discussion that 'the family' is not only sacrosanct but synonymous with privacy and should therefore be protected from state intrusion.¹³² For example, the Family Law Reform Party, when discussing the Child Support Scheme, appears to consider that the scheme is the 'thin-end of the wedge' of state intervention into private lives.

If (Big Brother) Government decides how to use our hard earned dollar, what will this mean to our much valued Democratic institutions, how far can they go in deciding with what we can read, see on T.V., how long we can live.¹³³

In the introduction to this paper we talked about the powerful normative appeal of a concept like the 'family'. Clearly, in this material, the groups are going further than making a simple appeal to this concept. In these materials the family is constructed as being foundational to society and social order. It is integrally associated with some of our most cherished institutions, such as democracy, privacy and personal freedom. On a less rarefied level of discussion the breakdown of the family is causally linked by a number of fathers' rights groups to a rise in general lawlessness and personal tragedy.¹³⁴ Thus it is suggested that divorce leads to a rise

¹²⁸ LFAA (Rockhampton), submission to the Joint Select Committee on Certain Family Law Issues, *Child Support Scheme*, above n 28, 5; DADs (Qld) in a submission to the Joint Select Committee on Certain Family Law Issues, *Child Support Scheme*, above n 28, 5 runs a similar argument in relation to the child support legislation.

¹²⁹ Lionel Murphy QC was the federal Attorney-General at the time that the Family Law Bill 1973 (Cth) was drafted which established the Family Court of Australia.

¹³⁰ LFAA (Rockhampton), 'Family Court: Accident or Design', above n 35, 16.

¹³¹ Child Support Action Group (Vic), submission to the Joint Select Committee on Certain Family Law Issues, *Child Support Scheme*, above n 28, 10.

¹³² For a critique of the public-private dichotomy see Katherine O'Donovan, *Sexual Divisions in Law* (1985), ch 1.

¹³³ Family Law Reform Party, submission to the Joint Select Committee on Certain Family Law Issues, *Child Support Scheme*, above n 28, 22. See also Child Support Action Group (Vic) submission to the Joint Select Committee on Certain Family Law Issues, *Child Support Scheme*, above n 28, 7.

¹³⁴ This has been referred to as a general 'crisis of paternity': Alison Young, 'In the Frame: Crime and the Limits of Representation' (1996) 29 *Australian and New Zealand Journal of Criminology* 81, 89.

in phenomena such as juvenile crime, suicide, domestic violence, drug use, sexual abuse, homelessness, early pregnancies and long term unemployment.

What is also obvious from these materials is that the 'family' — referred to without adjective or other identifying characteristics — is in fact the 'traditional' nuclear family headed by the father.¹³⁵ Because this particular ideological construct of the family is adopted by these groups they are able to define anything that threatens the male role as provider and protector within the 'traditional' family unit as something that threatens the family. Thus, the 'family' becomes synonymous with the 'breadwinner' role of fathers and therefore by implication this role is also central to social order, stability, democracy and so on. We have parenthesised the characterisation of the nuclear patriarchal family as 'traditional' because, contrary to popular perception, this family form has in fact been a relatively recent social phenomenon.¹³⁶

Some have suggested that fathers are threatened by the projected breakdown of their traditional gender roles because of fears that they will then become the disposable sex. Others suggest that state or public power is viewed with suspicion by fathers' rights groups because it threatens the private power and control that men have traditionally exercised over women and children within the family unit, and as part of their 'traditional' role. Thus, Nicholson CJ of the Family Court, speaking of the hostility fathers' rights groups express towards state intervention in the family, has said:

One can only surmise that this is an unfortunate manifestation of the current US phenomenon of right wing groups demonstrating hatred of all government institutions and particularly those which they perceive may interfere with their so-called right to exercise power over people who are smaller and weaker than they are.¹³⁷

According to this explanation the breakdown of traditional gender roles is mourned because of the loss of power and control that this represents for men. We will return to this point below.¹³⁸

H *Negative Depictions of Women*

Fathers' rights groups also tap into and utilise common myths and stereotypes about 'bad' women. Mothers are portrayed in their discourse as 'alimony drones' and as 'mendacious', 'vindictive', and/or 'unruly'.¹³⁹ We will examine these images in turn.

¹³⁵ Barry Weedon, Family Law Reform Party, LFAA Conference, above n 28 (papers on file with authors), says '[t]he traditional Family unit consisting of Father, Mother and children is currently under threat from many quarters in Australia.' See also Men's Rights Agency, 'Speaking for Ourselves', above n 20, 3.

¹³⁶ See, eg, Judith Stacey, *In the Name of the Family: Rethinking Family Values in the Postmodern Age* (1996) 38–42.

¹³⁷ Chief Justice Alastair Nicholson, 'Welcome' in *Enhancing Access to Justice*, above n 26, 1, 1–2.

¹³⁸ See below n 166 and accompanying text.

¹³⁹ Collier, 'Coming Together', above n 23, 28.

1 *Alimony Drones*

Women are frequently portrayed in the material generated by fathers' rights groups as 'alimony drones', or as involved 'in the business of ripping off men.'¹⁴⁰ In this vision the material position of separated women is greatly inflated and contrasted to the position of separated men, which is described in very bleak terms. A picture is thus painted by some groups¹⁴¹ of women living 'lives of small luxury'¹⁴² post-separation at the expense of men who are living in poverty.

According to this vision, child support,¹⁴³ spousal maintenance, social security entitlements and property settlements¹⁴⁴ enable women who have separated from their male partners to avoid work, buy cars and take trips to Disneyland. Thus, the Lone Fathers Association¹⁴⁵ comments that instead of spending child support on the children,

[s]ome custodial parents have taken holidays overseas, purchased properties and new cars, purchased expensive personal items, leave their children with baby-sitters while they go out to various clubs sometimes up to 4 times a week, then apply to the welfare systems for help. This ... is not an uncommon factor and can be easily proved.¹⁴⁶

In the same spirit Men's Confraternity suggests that in many cases the spouse spends the child support money on herself or her 'drunken paramour'.¹⁴⁷ Equality for Fathers says that children are being used as 'cash cow[s]'.¹⁴⁸

So convinced are they that the position in which women find themselves post-separation is financially advantageous that a number of these groups suggest that

¹⁴⁰ Men's Confraternity, submission to the Joint Select Committee on Certain Family Law Issues, *Child Support Scheme*, above n 28, 35.

¹⁴¹ Barry Williams, LFAA, submission to the Joint Select Committee on Certain Family Law Issues, *Child Support Scheme*, above n 28; Family Law Reform and Assistance Association (Qld), submission to the Joint Select Committee on Certain Family Law Issues, *Child Support Scheme*, above n 28.

¹⁴² LFAA, submission to ALRC, *Contempt*, above n 95, 2.

¹⁴³ Child support is completely different from, and yet frequently conflated with, spousal maintenance. This has presumably occurred because long-term spousal maintenance is now virtually non-existent in Australia. CCH, *Australian Family Law and Practice*, vol 1 (at 12 March 98) ¶25-500, [20-055] states that 'contested or agreed [spousal maintenance] awards will still remain a statistical abnormality.'

¹⁴⁴ Many of the groups express concern about the nexus between property settlements, spousal maintenance and child support. Eg, LFAA (Newcastle-Hunter) state that the 'courts tend to agree with female partners requests to double and even triple dip, allegedly on behalf of the children by getting child support and larger property settlements to make allowance for the children and spousal maintenance because they need to look after the children': LFAA (Newcastle-Hunter), submission to the Joint Select Committee on Certain Family Law Issues, *Child Support Scheme*, above n 28, 9.

¹⁴⁵ LFAA, 'Speaking for Ourselves', above n 60, 98 also comments that:

[T]he custodial parent may exacerbate the ill-will created by these excessive payments by spending the excess on new cars and other personal items rather than banking the money for further needs of the child. Given the total lack of accountability for monies which are intended to support the child, the question must be asked, who is the real victim here?

¹⁴⁶ Barry Williams, LFAA, submission to the Joint Select Committee on Certain Family Law Issues, *Child Support Scheme*, above n 28, 3.

¹⁴⁷ Men's Confraternity, submission to the Joint Select Committee on Certain Family Law Issues, *Child Support Scheme*, above n 28, 18.

¹⁴⁸ Equality for Fathers, submission to the Joint Select Committee on Certain Family Law Issues, *Child Support Scheme*, above n 28, 9.

there are women who deliberately get pregnant in order to set themselves up financially. The Lone Fathers Association comments that:

It is a simple (and possibly financially rewarding) matter for a female partner to inform a male partner that contraceptive measures have been taken, when they have not, and then deliberately attempt to conceive a child so that she can receive 'child support' payments for the next 18 years.¹⁴⁹

Another version of this is the suggestion that some women deliberately marry in order to set themselves up financially. For example Men's Confraternity believes that there is an

army of divorcee women in society prepared to marry poor and divorce rich ... Often the multiple-marriage divorcee specialist conceals her actual worth when making a 'kill' in order to accumulate a growing nest egg.¹⁵⁰

They suggest that this is 'a socially accepted form of prostitution' and that '[f]athers ... become concerned for the welfare of their children when the mother becomes involved in divorcee prostitution rackets because of its detrimental nature.'¹⁵¹

In contrast, men who are funding the lifestyle of the custodial parent which is described in these extravagant terms, are portrayed post-separation as being in financial shackles, living in their cars and contemplating suicide.¹⁵² The Lone Fathers Association comments that the non-custodial parent is left in poverty, with 98 per cent of their total wage going in property settlements and child support.¹⁵³

This rhetorical device works best in combination with others we have outlined above. Obviously the financial opportunities women are alleged to exploit in their role as carers of the children become more exaggerated if the needs of the children disappear from the discussion. Clearly too, the disempowered and financially desperate image of the separated male is reinforced by, and reinforces, the various techniques used to lay claim to victim status.

2 *Mendacious and Vindictive Mothers*

The portrayal of mothers as 'mendacious' and/or 'vindictive' is a common strategy of fathers' rights groups. For example, it is commonly alleged that women are making false allegations of violence in order to strip men of their possessions

¹⁴⁹ Barry Williams, LFAA, supplementary submission to the Joint Select Committee on Certain Family Law Issues, *Child Support Scheme*, above n 28, 10.

¹⁵⁰ Men's Confraternity, submission to ALRC, *Matrimonial Property*, above n 11, 4.

¹⁵¹ *Ibid* 4, 7.

¹⁵² Letter from Clayton Stellmaker, LFAA (Newcastle-Hunter) (received by ALRC, 27 July 1993), attachment to submission to the Joint Select Committee on Certain Family Law Issues, *Child Support Scheme*, above n 28, 3, 6.

¹⁵³ LFAA, communication with research assistant (notes on file with authors). This figure is distinctly at odds with the findings of the Australian Institute of Family Studies: Ruth Weston, 'Money Isn't Everything' in Peter MacDonald (ed), *Settling Up: Property and Income Distribution on Divorce in Australia* (1986) 279; Ruth Weston, 'Income Circumstances of Parents and Children: A Longitudinal View' in Kathleen Funder, Margaret Harrison and Ruth Weston (eds), *Settling Down: Pathways of Parents after Divorce* (1993) 135, 135-42; and the submission of the Department of Social Security to the Joint Select Committee on Certain Family Law Issues, *Child Support Scheme*, above n 28.

and their children, or to punish them. Thus Men's Confraternity describes an allegedly not uncommon scenario, which might be engineered by the mother as the resident parent, in the following terms:

[W]omen have quite often used access as an opportunity to play simplistic 'carrot and stick type' games with the father to be demeaning towards him ... A nasty 'catch-22' means of gaoling the father is used by women who obtain a restraining order the day before access is due, tip-off the Police the moment the father appears and suggest a scene of massive violence thus drawing the Police Force into the game as useful and effective pawns to provide them with a quite sadistic form of entertainment.¹⁵⁴

In fact, as we have pointed out earlier, the scholarly evidence to date suggests that allegations of sexual abuse or violence are not often falsely made.¹⁵⁵

Vindictive mothers also appear in the argument that custodial parents have an 'unchallengeable' power which they allegedly use commonly and arbitrarily to 'unilaterally' deny access to non-custodial parents, even when it is the subject of a court order.¹⁵⁶ For example, Parent Without Rights speaks of the custodial parent using the children as weapons.¹⁵⁷ The Child Support Action Group describes 'avengeful/greedy parent[s]' who restrict access in order to prevent a reduction in the non-custodial parents' child support obligations (since the amount of child support is linked to the number of hours the child spends with the non-custodial parent).¹⁵⁸ In fact, we are not aware of any studies which look at the issue of denial of access in a way which either supports or refutes these claims. Carol Smart comments on this issue when she suggests that there is a lot of work involved in sustaining access for the non-custodial parent and that, because this work is rendered invisible or assumed to be 'natural' (like most of women's caring work), it only becomes obvious when women refuse to do it.¹⁵⁹ At that point they are

¹⁵⁴ Men's Confraternity, submission to ALRC, *Matrimonial Property*, above n 11, 6–7.

¹⁵⁵ Kaye and Tolmie, above n 1, 52–3. Many researchers who have evaluated police practice in respect of domestic violence would be surprised to see the police being described as being so willing to intervene in a domestic violence complaint. See, eg, Julie Stubbs and Diane Powell, *Domestic Violence: Impact of Legal Reform in NSW* (1989).

¹⁵⁶ The Child Support Action Group (NSW) says that custodial parents can 'unilaterally decide that the non-custodial parent is an unsuitable parent or decide to punish them and withdraw access': Child Support Action Group (NSW), submission to the Joint Select Committee on Certain Family Law Issues, *Child Support Scheme*, above n 28, 9.

¹⁵⁷ Parent Without Rights, 'Intractable Access', above n 64, 2.

¹⁵⁸ Child Support Action Group (NT), submission to the Joint Select Committee on Certain Family Law Issues, *Child Support Scheme*, above n 28, 13.

¹⁵⁹ Smart, 'The Legal and Moral Ordering of Child Custody', above n 33, 496 says that the work of sustaining the image of their former husbands as adequate fathers also became an additional task in the repertoire of post-divorce care giving. It is interesting that when mothers refuse to take on this extra work they became identified as bad or vindictive mothers. It would seem that the work of sustaining access is like housework: it is only visible when it is not done.

She goes on to say that '[t]ypically, mothers ceased to do the work of sustaining access when they felt that their husbands had abrogated their duties as both husbands and fathers': Smart, 'The Legal and Moral Ordering of Child Custody', 497.

susceptible to being viewed as actively blocking access and thus as being vindictive or obstructive.¹⁶⁰

3 *Unruly Women*

Arguably the image that underlies the portrayal of women as alimony drones and as vindictive or mendacious mothers is that of the irresponsible or unruly woman. This woman spends the children's money on herself, denies her children necessary contact with their father, exploits the system to benefit herself, reneges on her marriage obligations on a whim and traps unsuspecting men into supporting her in her decadent lifestyle. Campaign for Men's Rights accordingly suggests that:

If the government were brave enough to enact legislation making women [as] responsible as men for the well-being of their children many of the problems being caused by family breakdowns would disappear.¹⁶¹

It appears that the subtext in much of this material is that women are irresponsible or unruly, specifically when they are not under the control of men.¹⁶² For example, Men's Confraternity comments that women's irresponsibility comes from women casting off their gender role obligations (by which they apparently mean their containment within a 'traditional' nuclear family).

In recent years, women have organized to free themselves of many of their former obligations, without necessarily accepting the obligations it is taken for granted that men have, or relinquishing aspects of their former life-style where it suits them.¹⁶³

Accordingly, as we have explained earlier, it is primarily separated women or those who are single parents who are selected for condemnation by fathers' rights groups. We have noted above some of the efforts by the groups to show that single motherhood is not successful. Another example is the suggestion that children in single-mother¹⁶⁴ families are more likely to be abused than children in intact families.¹⁶⁵

It is certainly significant that many of the suggestions on the fathers' rights agenda have the effect of making women, as custodial parents, accountable to, or subject to, a degree of continuing control by the non-custodial parent. As we have also noted above, some commentators have suggested that fathers' rights groups are

¹⁶⁰ The perception of mothers as being obstructive or 'implacably hostile' is often present in judgments made by the courts when contact is contested by mothers. Carol Smart and Bren Neale have suggested in 'Arguments against Virtue — Must Contact Be Enforced?' (1997) 27 *Family Law* 332, 333 that the court tends to imply that 'the only bar to a child's true welfare is his mother's irrational and spiteful hostility'. See also Miranda Kaye, 'Domestic Violence, Residence and Contact' (1996) 8 *Child and Family Law Quarterly* 285, 293–4.

¹⁶¹ Campaign for Men's Rights, submission to the Joint Select Committee on Certain Family Law Issues, *Child Support Scheme*, above n 28, 6.

¹⁶² We have noted above the attacks made by various fathers' rights groups on single-parent benefits which are seen as incapacitating the masculine 'breadwinner' role of fathers.

¹⁶³ Men's Confraternity, 'Matrimonial Property Law', attachment to submission to ALRC, *Matrimonial Property*, above n 11, 1.

¹⁶⁴ Stuart Miller and Rich Zubaty, American Fathers Coalition, 'Reuniting Fathers with Their Families', *Washington Times* (Washington DC, USA), 19 December 1995, A19, described the single-mother-headed-household as a 'human disaster zone'.

¹⁶⁵ LFAA, 'Speaking for Ourselves', above n 60, 27.

not so much genuinely interested in supporting their children as in maintaining or assuming control over their ex-spouse and the children. For example, it has been suggested by one commentator that the notion of joint custody 'probably seems so attractive to men's groups because it is a concept of formal legal "rights" over children and the family as a whole.'¹⁶⁶ Indeed some have argued that the concept of joint parenting which is favoured by the groups is not one of joint physical parenting where both parties equally share the actual work of parenting, but one in which the mother does the physical work of caring but both parties are equally involved in making decisions about the child's life.¹⁶⁷ In other words, a concept in which women continue to do the work of primary parenting and fathers continue to have a say in the process of deciding the form that the mothers' parenting will take. The idea that custodial parents should remain subject to the continuing control of the non-custodial parent is reinforced by suggestions that fathers should be able to withdraw child support whenever it becomes necessary to force mothers to provide access; that mothers should be obligated to send a statement detailing how the child support has been spent to the non-custodial parent for approval; that the obligation to pay child support should be dependent on men knowing the whereabouts of the children (and their mother); that mothers ought not be able to move the children beyond a certain radius of the non-custodial parent without their approval.¹⁶⁸

There are also other punitive suggestions about ways to tame irresponsible women.¹⁶⁹ Examples include: the suggestion that women who obstruct court ordered access should be gaoled;¹⁷⁰ the suggestion that women who allege domestic violence and cannot produce physical injuries, photographic or medical

¹⁶⁶ Annette Hasche, 'Sex Discrimination in Child Custody Determinations' (1989) 3 *Australian Journal of Family Law* 218, 230. Behrens, above n 25, 215 says that an

idealised view of family and shared parenting which underlies the legislation can be used to paint women whose family experience does not reflect the ideal as deviant. Combined with increased moves towards mediation, mothers may be painted as difficult and uncooperative for refusing to agree to fathers having control in an area in which the father has never been significantly involved.

¹⁶⁷ Graycar, 'Equal Rights *Versus* Fathers' Rights', above n 46, 175; Hasche, above n 166, 230; Fineman, 'Dominant Discourse', above n 83, 733.

¹⁶⁸ Men's Confraternity, submission to Joint Select Committee on Certain Family Law Issues, *Child Support Scheme*, above n 28, 29. See also the submissions of the Family Law Reform Party, Campaign for Men's Rights and the Family Law Reform Association (NSW) to the Joint Select Committee on Certain Family Law Issues, *Child Support Scheme*, above n 28. The LFAA (Newcastle-Hunter) suggests that child support should only be payable while the child is within a 50 mile radius from the non-custodial parent: LFAA Conference, above n 28 (papers on file with authors). The Child Support Action Group (NSW) also suggests that child support be dependent upon the child's proximity to her/his non-custodial parent: Child Support Action Group (NSW), submission to the Joint Select Committee on Certain Family Law Issues, *Child Support Scheme*, above n 28, 6.

¹⁶⁹ Note also the implicit criticism of women for forming subsequent attachments contained in comments such as that made by Men's Confraternity, submission to the Joint Select Committee on Certain Family Law Issues, *Child Support Scheme*, above n 28, 18 to the effect that women spend child support money on their 'drunken paramour'. This is as opposed to men's repartnerships which are argued to be a 'right'. See, eg, Non-Custodial Parents Reform Group, submission to the Joint Select Committee on Certain Family Law Issues, *Child Support Scheme*, above n 28, 19.

¹⁷⁰ Parent Without Rights, 'Intractable Access', above n 64, 4.

evidence and witnesses, should be automatically charged with false complaint;¹⁷¹ the suggestion that the custodial parent should be required to pay tax on their child support payments;¹⁷² and the suggestion that custodial parents on social security should have their pension payments reduced by a dollar for every dollar they receive in child support.¹⁷³ A number of fathers' rights groups argue that mothers should not be able to get financial support in their role as single mothers, either from the social security department in the form of sole parent pensions, or from ex-partners in the form of spousal maintenance or substantial child support.¹⁷⁴ At the same time, some of these groups argue that men should be given priority in employment.¹⁷⁵ This argument reduces itself to the proposition that women's only realistic option for financial survival should be dependency on men in the context of an intact family relationship.

I (Re)Constructions of Fatherhood

Fathers' rights groups have built on the idea that father presence is desirable.¹⁷⁶ They have done this partly by demonstrating the dire consequences if fathers are not involved in families,¹⁷⁷ and partly by 'reconstructing fatherhood'¹⁷⁸ so that it would appear that men are, in fact, increasingly, involved in child care. For example, Equality for Fathers argues that there has been a 'change in community attitudes and participation of fathers in parenthood, and the general trend towards equality, has meant that the differences between male and female are markedly reduced.'¹⁷⁹ However, according to this group, the courts, in awarding custody more frequently to mothers, do not reflect these changes in society.¹⁸⁰

The suggestion that fathers are participating equally in parenting, and the corresponding image of the 'nurturing dad', is a powerful rhetorical device in the

¹⁷¹ Men's Confraternity, 'Shattering the Myth', above n 64, 36.

¹⁷² Men's Confraternity, submission to the Joint Select Committee on Certain Family Law Issues, *Child Support Scheme*, above n 28, 35.

¹⁷³ DADs (Qld) submission to the Joint Select Committee on Certain Family Law Issues, *Child Support Scheme*, above n 28, 2.

¹⁷⁴ Child Support Action Group (NT), submission to the Joint Select Committee on Certain Family Law Issues, *Child Support Scheme*, above n 28, 9; Child Support Action Group (NSW), submission to the Joint Select Committee on Certain Family Law Issues, *Child Support Scheme*, above n 28, 3; Child Support Action Group (Vic), submission to the Joint Select Committee on Certain Family Law Issues, *Child Support Scheme*, above n 28, 7.

¹⁷⁵ See, eg, letter from M Ward, Men's Confraternity (received by ALRC, 11 December 1985), attachment to submission to ALRC, *Matrimonial Property*, above n 11.

¹⁷⁶ See generally Richard Collier, *Masculinity, Law and the Family* (1995) 202.

¹⁷⁷ Kaye and Tolmie, above n 1, 28.

¹⁷⁸ See generally Lynne Segal, 'The Good Father: Reconstructing Fatherhood' in Lynne Segal, *Slow Motion: Changing Masculinities, Changing Men* (1990) 26; Janice Drakich, 'In Search of the Better Parent: The Social Construction of Ideologies of Fatherhood' (1989) 3 *Canadian Journal of Women and the Law* 69. Charlie Lewis, *Becoming a Father* (1986) 5 suggests that the 'view that men are starting to become involved in family life ... is as old and perhaps as prominent as the notion of patriarchy.'

¹⁷⁹ Equality for Fathers, submission to the Joint Select Committee on Certain Family Law Issues *Child Support Scheme*, above n 28, 6.

¹⁸⁰ *Ibid.*

hands of fathers' rights groups.¹⁸¹ Some of its power might derive from the fact that it represents a widely held ideal of what gender roles within the family should look like. Indeed, feminist scholars, who represent a constituency one might imagine on many issues to be opposed to that represented by fathers' rights groups, have been arguing for a number of years that there should be a breakdown of rigid gender roles and a greater involvement by men in child care and nurturing. Lynne Segal says that this reconstruction of masculinity into something less oppressive to women

is part of the ideological struggle to break down the polarity between 'masculine' and 'feminine' — wherein all that is soft, gentle and tender is all that is, definitively, not 'masculine'. And it is part of a practical struggle by women for greater equality in the home. We need to proceed very carefully in sorting through the rights of active fathers, guided by the principle that it is not biology, but the shouldering of responsibilities, which should determine carers' rights in relation to those they love and nurture.¹⁸²

Indeed, such views led Rena Uviller to write 20 years ago that 'championing the rights of fathers seeking sex-neutral treatment under the law appears to be a desirable feminist theory.'¹⁸³

This 'reconstruction of fatherhood' on the part of fathers' rights groups is also powerful because it is reinforced by recent research in the social sciences and in legal discourse.¹⁸⁴ Carol Smart refers to this phenomenon when she says that:

The father as constituted in legal discourse is no longer the paterfamilias, he is the producer of normal, heterosexual children, the stabilizing anti-delinquency agent, and the bringer of realistic values and desire for achievement ... This is not to suggest that this has been brought about by shifting legal discourse alone. Crucial to this have been the 'psy' discourses which in the 1950s and 1960s constructed the mother as vital to the child's well-being, and which in the 1980s and 1990s are doing the same for the father.¹⁸⁵

This reconstruction of the father is also reinforced by media portrayals of 'new men' and 'new fathers'. Naomi Wolf noted in 1993 that:

Recent popular movies like *Field of Dreams*, *A River Runs Through It*, *Patriot Games*, *Awakenings*, *The Bodyguard*, *In the Line of Fire* and even *Jurassic*

¹⁸¹ It is worth noting, however, the degree to which the rhetoric of the caring father is undermined by the specific position some fathers' rights groups take on a number of issues, particularly issues relating to violence and child support. On contradictions between fathers' rights discourse and practice, see Carl Bertoia and Janice Drakich, 'The Fathers Rights Movement: Contradictions in Rhetoric and Practice' (1993) 14 *Journal of Family Issues* 592.

¹⁸² Segal, above n 178, 57–8. Bob Connell notes that 'many of the conventions of hegemonic masculinity, such as restraining one's emotions and always trying to dominate in a conflict, are outrageously inappropriate in the care of young children': Robert Connell, 'Men, Masculinities and Feminism' (1997) 16(3) *Social Alternatives* 7, 10.

¹⁸³ Rena Uviller, 'Fathers' Rights and Feminism: The Maternal Presumption Revisited' (1978) 1 *Harvard Women's Law Journal* 107, 111.

¹⁸⁴ In the Canadian context, Susan Boyd has noted that an 'ideology of the new fatherhood, combined with the ideology of children's rights or welfare' has become powerful in custody law: Susan Boyd, 'Is There an Ideology of Motherhood in (Post)Modern Child Custody Law?' (1996) 5 *Social & Legal Studies* 495, 497.

¹⁸⁵ Smart, 'The Legal and Moral Ordering of Child Custody', above n 33, 485–6.

Park all provide a model of the 'good father', and reimagine masculinity as virile strength deployed to defend, protect and parent.¹⁸⁶

Such images have persisted in popular film. Some recent examples of films which employ concepts of involved and nurturing fatherhood include *The Lost World*, *Kolya*, *Father's Day*, *Hotel Sorrento*, *Mrs Doubtfire*, *The Birdcage*, and *Hollow Reed*. In order to show the nurturing side of 'tough' men such as male rockstars and sportstars, they are often shown photographed in newspapers and magazines with their children.¹⁸⁷ Newspaper articles deliberate about the concept of fatherhood in the 1990s.¹⁸⁸ In the context of popular romantic fiction, Nancy Peters, publisher at Harlequin Mills & Boon, tells us that 'fathers, especially single dads, are the new heroes'.¹⁸⁹ All of these influences have enabled one writer to say, 'we've rediscovered daddy in our society.'¹⁹⁰

In spite of such portrayals, and their appeal, it is difficult to be certain whether there has in fact been a trend towards greater involvement in child care by Australian fathers. Graeme Russell in 1983 concluded from his research that there was evidence of 'a slow but nevertheless significant shift in father participation'.¹⁹¹ However Naomi White's more recent Australian research found that most of the men studied had very low levels of involvement with their children. Being with their children for many men meant being in the same room while children played, or spending time with them in sports at weekends.¹⁹² Similarly, the Australian Bureau of Statistics in 1993 found that men were contributing very little to housework and child care.¹⁹³ The rhetoric of equal parenting based on reconstructed notions of fatherhood is contradicted by apparent inequalities in the reality of who is actually shouldering the child care burden.¹⁹⁴

¹⁸⁶ Naomi Wolf, *Fire with Fire: The New Female Power and How It Will Change the 21st Century* (1993) 25–6. See also Carol Smart, 'Power and the Politics of Child Custody' in Carol Smart and Selma Sevenhuijsen (eds), *Child Custody and the Politics of Gender* (1989) 1.

¹⁸⁷ See, eg, 'The Rock 'n' Role Models of Fatherhood', *Sun Herald* (Sydney), 24 August 1997, 5; 'Footy Fever and Fatherhood', *New Idea* (Melbourne), 28 September 1996, 16.

¹⁸⁸ Some examples include: Deborah McIntosh, 'Hey, DAD: How 90s Fatherhood Changed Man', *Sun Herald* (Sydney), 1 September 1996, 4–5; Bettina Arndt, 'A Father's Place', *The Sydney Morning Herald* (Sydney), 26 July 1997, 4; Adele Horin, 'Yo Dads!', *The Sydney Morning Herald* (Sydney), 29 August 1996, 9; Bernard Zuel, 'Wholly father?', *The Sydney Morning Herald* (Sydney), 2 September 1994, 13. In the US context, see Scott Coltrane, *Family Man: Fatherhood, Housework and Gender Equity* (1996) ch 1.

¹⁸⁹ 'Daddy Cool', *The Sydney Morning Herald* (Good Weekend) (Sydney), 9 August 1997, 9.

¹⁹⁰ Samuel Osherson, *The Passions of Fatherhood* (1995) xi. Of course, we do not mean to suggest that such a trend is monolithic. It is obviously still possible to find images of men parenting being utilised as a source for comedy and disapproval. The point we are making here is that there is a rich and burgeoning phenomenon of reimagined fatherhood which can be tapped into. For a fuller discussion on fatherhood in the media, see Deborah Lupton and Lesley Barclay, *Constructing Fatherhood: Discourses and Experiences* (1997) ch 3.

¹⁹¹ Graeme Russell, *The Changing Role of Fathers?* (1983) 74.

¹⁹² White, above n 26.

¹⁹³ Australian Bureau of Statistics, *How Australians Use Their Time* (1993). See also Bob Pease and John Wilson, 'Men in Families: Moving Beyond Patriarchal Relations' in Wendy Weeks and John Wilson (eds), *Issues Facing Australian Families: Human Services Respond* (2nd ed, 1995) 55.

¹⁹⁴ Carolyn Cowan and Phyllis Bronstein comment on the 'significant discrepancy between men's actual involvement [with their children] and what men and women think men's role in modern families ought to be': 'Fathers' Roles in the Family: Implications for Research, Intervention, and

As Drakich notes, '[t]he image of the nurturing father is a double-edged sword' for women.¹⁹⁵ It is what feminists have been asking for, and yet, the 'image ... has taken on a reality of its own that misrepresents the reality that mothers are still the primary caregivers of children.'¹⁹⁶ To the degree to which it represents an actuality, most agree that it is to be celebrated. To the degree to which it remains an attractive fiction it is problematic for women. To this extent, the work that women do will continue to be unvalued and invisible, this time not because we fail to appreciate its importance, or the sacrifices of those who undertake it, but because we are attributing at least part of the work to the wrong person. The danger is that women's continuing contributions will not be recognised in future debates and decisions in relation to child care, child support and matrimonial property division.

III CONCLUSION

Within the rhetoric of fathers' rights groups, men's and women's interests are presented as being necessarily in opposition. Men are suffering and therefore women must be gaining at their expense. If women have rights they must have won these at the cost of men, who are therefore victimised.¹⁹⁷ Fathers' rights groups thus appear to be blaming women for their perceived losses and suffering, although this blame is also extended to the family law system and the state. This 'blaming rhetoric' serves the function of allowing the groups to externalise hurt and guilt and to avoid responsibility for qualitative change. Arguably it also maintains a focus on seeking solutions to family change that involve continued control over the '(m)other' instead of the best interests of the child or even the best possible outcome for *all* of the parties who are involved.

This blame and denigration of others or the 'other' might be necessary in order to support the characterisation of their concerns in terms of concepts like equality and rights. Formal equality claims require the balancing of one set of interests against another set of interests. Accordingly, if fathers' rights groups can devalue the contributions made by mothers, it is simpler to show that the contributions of fathers are 'equal' to those of mothers and hence 'equal' treatment should follow. Rights claims are commonly made in response to encroachment by other interests. Accordingly, if fathers' rights groups can show that mothers have 'special rights' and are over-privileged and powerful, it follows that fathers need rights to provide protection from them, or at least guarantee equal treatment with them.¹⁹⁸

It is not clear to what extent the dichotomy between the reimagined 'good father' and the rediscovered stereotype of the 'bad' or 'unruly' mother might also be a consequence of the choice many fathers' rights groups have made to present their claims in the form of a powerful narrative structure, the 'morality play', in which an appeal is made to protect good individuals from bad individuals and/or

Change' in Carolyn Cowan and Phyllis Bronstein (eds), *Fatherhood Today: Men's Changing Role in the Family* (1988) 341, 342.

¹⁹⁵ Drakich, above n 178, 83.

¹⁹⁶ Ibid.

¹⁹⁷ See generally Collier, 'Coming Together?', above n 23, 30.

¹⁹⁸ Herman, '(Il)legitimate Minorities', above n 50, 351.

systems.¹⁹⁹ Others have characterised this narrative structure in terms of distinguishing 'heroes from villains'.²⁰⁰ The qualities of innocence and helplessness that claims to victimisation attract, the telling of 'horror stories', the presentation of sensationalised statistics and the association of the male role with the survival of the family and (by necessary association) of social harmony are also devices that support this simple and persuasive narrative.²⁰¹

Roland Barthes has defined 'myths' as stories that transform half-truths and speculation into full-truths with the status of the natural, eternal and universal.²⁰² As part of the contemporary mythology generated around the family law system, it has become a common myth that the Family Court favours women. A popular radio interviewer expressed this when he said 'the men I talk to really believe that the Family Court these days is a case of "abandon hope all ye men who enter here"'. Rightly or wrongly, that's the way justice is perceived.'²⁰³ Clearly fathers' rights discourse, both in substance and in structure, has contributed to (and benefited from) the development of contemporary mythology about the family law system. While much of it does not withstand critical scrutiny,²⁰⁴ the media and the political process are arguably 'more responsive to the mythology than to sound empirical examinations'.²⁰⁵ The widespread exposure some sections of the media have given to (sometimes slightly diluted) versions of the ideas²⁰⁶ of the fathers' rights movement both illustrate, and consolidate, the gains in discursive legitimacy which these groups have made.

¹⁹⁹ Coltrane and Hickman, above n 42.

²⁰⁰ See, eg, Moore, above n 84.

²⁰¹ As Carol Smart has said in another context, 'Unquestionably a Moral Issue', above n 77, 189: '[s]harp dichotomies of good and evil are established: there is no nuance at all.'

²⁰² Roland Barthes, *Mythologies* (Annette Lavers trans, 1972), cited in Peggy Sanday, 'Rape Discourse in Press Coverage of Sex Crimes' (1993) 91 *Michigan Law Review* 1414.

²⁰³ Mike Carlton, interview with Bettina Arndt, 2BL (Australian Broadcasting Corporation, Sydney, 11 October 1996).

²⁰⁴ See, eg, Kaye and Tolmie, above n 1.

²⁰⁵ Martha Fineman, 'Illusive Equality: On Weitzman's *Divorce Revolution*' [1986] *American Bar Foundation Research Journal* 781, 788.

²⁰⁶ See, eg, 'Bettina's World' in Libby Wraight, 'Sit Down Girlie' (1996) 21 *Alternative Law Journal* 288, 288-9.