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Fathers 4 Justice, law and the new politics of fatherhood

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TEXT:

Who are those guys? What does it all mean – the Marvel Comics costumes, the orchestrated gantry stunts, the banners, the Santa outfits, the nooses, the desperate measures? n1

If you give a father no options, you leave him no choice. Fatherhood is under attack in a way inconceivable 30 years ago. n2

INTRODUCTION

Divorce law has long been a site of contestation and struggle. The question of how law responds to the 'transformations of intimacy' n3 which frame family practices n4 has been, in a sense, the very stuff of family law. There are signs, however, that the nature of these struggles may be changing in the area of post-divorce/separation contact. The legal status, responsibilities and rights of men who are fathers – married or unmarried, cohabiting or separated, biological or social in nature – is a topic with a long and well-documented history. Yet recent events in the UK and elsewhere suggest a heightening of concern about – and, in particular, a growing politicisation of – the relationship between law and fatherhood.

n5 This article seeks to address the arguments presented by, and possible impact of, fathers' rights organisations in seeking to set a reform agenda in this area of law in the UK. Internationally, an increasingly vocal, visible and organised fathers' rights movement has been credited with influencing perceptions of the politics of family justice. n6 Fathers, it is argued, have become the 'new victims' of family law justice systems which have somehow moved 'too far' in favour of mothers. What follows presents an attempt to understand these developments. In particular, this paper seeks to explore the emergence of a 'new militant' direct action fathers' rights agenda, best illustrated in the UK context by the group 'Fathers 4 Justice'. n7

WHAT HAPPENED? FATHERS 4 JUSTICE AND LAW REFORM: THE 'OUTLAW FATHERS FIGHT BACK'

'We have drawn a line in the sand and have declared that we will no longer tolerate the breaking of the sacred bond between parents and child by the state ... We will finish what we have begun. For our children.' n8

Fathers' rights organisations, like the broader men's movement with which they have become associated, are a well-established presence in debates about family law reform, both in the UK and internationally. n9 There is, of course, no one fathers' rights perspective. n10 Within a loosely based coalition there exist a diversity of approaches and political views. n11 Fathers 4 Justice are a relatively new organisation in the field and have attracted considerable media attention n12 as a result of a series of demonstrations involving fathers and their supporters. n13 Their protests have been diverse

in form, organisation/planning and public visibility. They have encompassed: the traditional civil rights march; n14 physical attacks on government offices (in particular those of the Children and Family Court Advisory and Support Service (CAFCASS)); protests outside the homes of solicitors, barristers and judges n15 (as well as, in September 2004, the British Royal Family); and a series of confrontations with senior government figures including, in May 2004, an incident which involved the throwing of a condom of purple flour at the British Prime Minister. n16 Fathers 4 Justice have become perhaps most well known, however, for a series of protests involving men dressed as comic book characters scaling a succession of cranes, bridges, courthouses and other public structures and buildings around the country. Described as 'straining at the leash' n17 in their desire to engage in civil disobedience, activists from Fathers 4 Justice have, to date, staged numerous protests in cities across Britain, with fathers 'dressed as Batman, Robin, Superman and Spiderman' n18 becoming an increasingly common sight across bridges, gantries and other public buildings.

The development of case-law and detail of the policy agendas which have informed the rapidly shifting debate around contact law reform are beyond the scope of this paper. n19 What has become clear, however, and an issue on which there appears to be general agreement, is that there has been a 'ratcheting up' of the contact debate in the period during which Fathers 4 Justice have been active. Senior judicial figures have made public what would normally have been private rulings, making clear their belief that the family justice system has frequently failed fathers (a development which prompted the observation that 'twelve months ago such judgements would have been unthinkable'). n20 The extensive media coverage of the Fathers 4 Justice campaign, backed notably by the public support of Bob Geldof, n21 has been both critical as well as broadly supportive of the means, as well as the ends, of the organisation. n22 There is little doubt, however, that politicians and policy makers have taken notice of the growing public profile of fathers' rights which has resulted. In April 2004, the government announced it was committed to introduce 'new laws to end the child custody wars' n23 in the form of a Green Paper outlining proposals aimed at diverting divorcing parents, as far as possible, from the courts; promoting 'generous parenting for both'; and introducing early intervention schemes based on the 'clear expectation' that both parents will have the time to form a meaningful relationship with the child (see below). Prior to the subsequent publication of Parental Separation: Children's Needs and Parents' Responsibilities in July 2004, n24 the then Leader of the Conservative Party announced the commitment of his party to the 'strong presumption' that fathers should have equal rights. The climate of debate, he acknowledged, had shifted in recent years as a result of the protests of fathers; a change which then needed to be reflected in law reform.

Many have broadly welcomed the attempt on the part of the government to seek an end to the adversarial system in contact disputes. The debate at the time of writing is focused on the introduction of early intervention schemes and parenting plans, a revising of the available court sanctions and reforms aimed at shifting the attitudes and behaviour of parents towards divorce and separation. n25 The proposals have been considered by Fathers 4 Justice, however, to be 'too little, too late'. n26 Why? The Fathers 4 Justice campaign addresses a broad range of issues. It calls for the establishment of a 'Bill of Rights' for the family, for the institution of 'an open and accountable system of family law open to public and parliamentary scrutiny', for an end to fathers being 'robbed' by 'profiteering' legal agents (who are seen as on a 'grotesque gravy chain'); n27 and, in particular, it demands the secure enforcement of contact orders via appropriately punitive penalties for those resident parents (predominantly mothers) who default. There is one core demand, however, in relation to which the government has steadfastly refused to move; that is, the institution of a legal presumption to contact and shared equal parenting, whereby non-resident parents will, it is proposed, have a legal right to see their children. n28

How is one to make sense of these events? For all their public visibility in recent years and the high media profile of Fathers 4 Justice in shaping the climate of debate in Britain, their success in influencing government policy has arguably been limited. Shared equal parenting has been explicitly and unequivocally rejected. n29 The government's position has been informed, rather, by the insights of research, including that of socio-legal scholarship, n30 which has directly countered key points advanced by Fathers 4 Justice; the assumption, for example, that the vast majority of men are, in fact, equal carers n31 and the belief that the '50/50' shared parenting split is, in the vast majority of cases, workable in material and practical terms. n32 Critics have noted the conceptual ambiguity of the 'meaningful relationship' with children sought by fathers' rights activists. n33 Concern has also been expressed over the consequences for women of the enforcement of court orders of the kind sought and related issues around post-separation financial arrangements.

n34 The central claim that fathers are now the 'victims' of family law has been described as profoundly wrong. Several academic commentators have suggested, rather, that it is the needs and choices of women and children which have, if anything, been marginalised by the growing focus on fatherhood within the law relating to contact (see further below).

In the remainder of this article I wish to chart a way through the apparent disjuncture between, on the one hand, official discourse, research studies and policy goals; and, on the other, what appear to be the lived realities of many of

these men's lives – a social experience of divorce which has led to a perception on the part of apparently growing numbers of men that family law and the family justice system are unjust, oppressive and somehow corrupt in how they treat fathers. It is necessary, first, to consider how divorce has been conceptualised in the growing debate about contact.

RECONCEPTUALISING POST-SEPARATION FAMILY LIFE: THE NEW FATHERHOOD AND THE GOOD DIVORCE

'We are at war now, and that war will continue until such time as the Government starts taking the crisis in family law seriously. The gloves are off. There is a difficult time ahead, but we are prepared for it.' n35

Divorce, Kaganas and Day Sclater have argued, n36 is a process which obliges parents to 'position themselves in relation to a range of often competing discourses (legal, welfare, therapeutic and, more recently, human rights) and to find ways of living alongside them'. n37 A plurality of different forms of expertise come together in the construction of family policy formulation around contact. n38 A range of discourses and institutional practices may serve to contain diverse aspects of this process, 'providing frameworks in which the experiences of divorcing parents take shape'. Divorce, however, is 'framed at the intersections of legal practice, social policy, welfare ideology, relationship breakdown and personal pain'. n39

This kind of conceptualisation of divorce has proved influential within a range of studies in recent years which have sought to unpack the emergence of what has been described as the dominant welfare discourse in the field of family policy. Within the 'new welfarism', it is argued, children have been conceptualised as vulnerable and divorce and separation have been seen as particularly damaging, both for the individuals concerned, for children and for society. n40 Located within the context of a political refocusing on ideas of citizenship and responsibility n41 there has occurred, Smart and Neale suggest, n42 no less than a clear and determined attempt to effect 'social engineering' in the area of the family by, in Smart's words, 'changing the very nature of post-divorce family life'; n43 no less than a 'paradigm shift' in how the state relates to the family. n44 In this process a repositioning of fatherhood has been widely seen as a central element. Ideas of 'good' fatherhood, that is, have been 'reconstructed', 'reconstituted', 'remade' (the used terms vary) in the legal regulation of post-divorce family life. n45

This raises three important issues pertaining to an analysis of fathers' rights. First, what constitutes 'good enough' post-divorce parenting is not, and has never been, universally agreed. It is not, as Boyd puts it, a matter of a neutral process of norm creation. It is, rather, about struggles over meaning and desired norms, of the complex interrelationship between social and legal knowledge(s) and power. n46 Secondly, the welfare discourse, as above, has involved a model of child welfare that 'places cooperative parenting and contact with the non-resident parent at the centre of children's well-being'; n47 a non-resident parent who is, in the majority of cases, the father. Thirdly, the new paradigm of divorce law has positioned men and women in different ways as, variously, good, responsible (or irresponsible) subjects of divorce (see below).

When seen against this backdrop, the arguments advanced by Fathers 4 Justice would, on the surface, appear to chime in a number of respects with the dominant welfare discourse. They each evoke, for example, ideas of the vulnerable child in need of contact with their father; of the responsible parent who should, in turn, facilitate or seek such contact. In short, it has been argued, there has emerged a powerful and culturally hegemonic representation of good, benign fatherhood in law; a father figure, and an approach to co-parenting, not dissimilar to that evoked by fathers' rights groups in their critique of the law.

How accurate, in such a context, is the view that fathers have become the 'new victims' of contact law? In the next section I shall look more closely at the arguments deployed by fathers' rights groups. I will then outline the growing critical literature which has sought, drawing on diverse methodological and theoretical perspectives, to explore the policy interventions made by fathers' rights organisations such as Fathers 4 Justice. I shall proceed, finally, to trace a way through the apparent tensions and contradictions in this area. In looking beyond the issue of law and fathers' rights, I wish to set out, tentatively, what may be happening in this area and explore why it should be the case that fathers' rights has become an issue of such growing political importance in the field of family law.

ARE FATHERS REALLY THE 'NEW VICTIMS' OF CONTACT LAW? ARGUMENTS, MYTHS AND REALITIES

The rhetorical devices of Fathers 4 Justice

Fathers' rights agendas have played out in different ways across jurisdictions. n48 It is possible, nonetheless, to detect within the now rich international literature n49 in the field some common rhetorical devices employed by the fathers'

rights movement. These have involved:

- . the embrace of the language of formal equality, n50 an appeal to 'treat fathers equally' which is evident, for example, in the Fathers 4 Justice depiction of their activists as 'suffragents'; a campaign branding via use of the colour purple; n51
- . a deployment of, and appeal to, formal legal rights (what Smart and Neale have characterised as evoking a self-interested, individualised form of power); n52
- . a claim to victim status, n53 as above, supported by the selective use of statistics n54 and a frequent, and undoubtedly emotionally powerful, use of personal anecdotes of men's suffering in the field of family justice; n55
- . a conflation of the interests of fathers and children, in such a way that they become, in effect, one and the same thing; n56 and
- . a concern to protect or defend the (heterosexual) 'family' from the social ills of father-absence; n57 and the 'growing problem' of lone motherhood. n58

This latter issue draws on a more general negative depiction of women, n59 a blaming of mothers in particular, n60 which has been seen as indicative of a strand of anti-feminism, if not misogyny, within the fathers' rights movement. n61 Mothers appear, variously, as 'alimony drones', n62 'mendacious and vindictive', n63 'unruly' and 'irresponsible' figures. n64 Lone motherhood, in particular, is linked to ideas of masculine crisis in such a way that father absence becomes both a cause and consequence of social/family breakdown. n65 The Fathers 4 Justice website cites in this regard the examples of youth offending, children growing up with 'multiple step-fathers' 'but denied access to their own dads', despair, debt, poverty and childlessness on the part of men, anger, suicide, breakdown and social catastrophe as direct results of father-absence. n66

In contrast to such an image of mothers, fathers are consistently depicted as respectable and socially 'safe' n67 subjects; 'sharer[s] of responsibilities', n68 active participants in paid employment, child care and domestic labour. Men's increasing role in the family is enmeshed with higher rates of women's participation in the workforce. At the same time, the findings of therapeutic, psychological and sociological research are drawn on so as to suggest a qualitative, as well as quantitative, shift in men's physical and emotional relationships to children and childcare, as well as in men's own self-identification around ideas of commitment to 'family life'. n69 Fatherhood is, above all, seen as a key provider for men of a sense of secure, stable masculine identity. Fathers are 'carriers of rights', n70 individuals whose full citizenship is then to be embodied, or denied, by a formal recognition of their equal status in the field of family law.

The New Fatherhood in Practice: A Case of 'Motherhood Descending'? n71

I have suggested that this depiction of fathers maps in a number of respects to the model of fatherhood associated with the welfare discourse, as above. Yet what has this meant in practice? A growing theoretical and empirical research base has questioned the consequences of these developments for parents who divorce – and, in particular, the impact of the resulting 'new contact culture' on mothers. There now exists a body of research which suggests that the new fatherhood has impacted on the practices of the courts, lawyers, family welfare professionals and parents; and the picture which emerges is very different from that suggested by Fathers 4 Justice. n72

Research has identified, for example, the emergence in case-law of the figure of the 'implacably hostile', bad, selfish mother; n73 the double-standard at play whereby there would appear to be no such figure as the 'implacably irresponsible' father. n74 Within the fathers' rights discourse it is assumed, rather, that fatherhood is only revealed as problematic for law at the point of divorce or separation. Yet, Smart and Neale argue:

'... for the majority of heterosexual couples who follow traditional child-care arrangements, fatherhood still does not routinely provide an identity for a man nor necessarily an active, involved relationship with children ... men's behaviour may well be changing [but] for the majority of fathers, fathering is something that they have to fit into a schedule dominated by paid employment, which tends to mean that their core identity is generated elsewhere.' n75

There exists, in short, a disjuncture between the equality rhetoric advanced by groups such as Fathers 4 Justice and the continuing (gendered) realities of parenting, both during subsisting relationships and after divorce/separation. It is the resident parent, not the non-resident, who would then appear to be bound by the obligations of the co-operative parenting project:

'Good mothers not only refrain from obstructing contact but actively facilitate it. Good fathers, at least for the purposes

of contact, take some interest in their children and do not harm them or, generally speaking, behave violently to mothers. Good parents co-operate and do not litigate.' n76

Rhodes and Boyd, writing of developments in Australia and Canada respectively, note further consequences of the new ideology of motherhood in family law, in particular in the constitution of stories about selfish mothers which, it is suggested, can have implications for those women who do wish to raise genuine concerns about the capacity of some fathers to care for their children. n77 This issue has assumed critical importance in relation to questions of violence. Non-resident fathers, it has been argued, have been empowered by the new contact order culture in such a way that, as the idea of the 'clean break' has been repositioned as undesirable, new pressures have been placed on women to agree to contact arrangements, notwithstanding concerns that might be held about domestic violence. At the same time, it is suggested, issues of violence have, in the context of a broader ideological promotion of the harmonious divorce, been systematically marginalised within divorce mediation practice. n78 Research suggests, however, that the reasons for the breakdown of contact arrangements may be far more complex than any image of women simply 'refusing' access would seem to suggest. n79

Leaving aside the questionable empirical reality of large numbers of mendacious mothers acting in this way, far from women deploying a form of uni-directional power, as it has been termed, mothers may in fact be experiencing a form of 'debilitative power' exercised on the part of fathers; that is, a constraining of their own drive to independency, autonomy and self-development after separation. n80 Rhodes questions the broader assumptions underscoring a model of post-separation parenting in which father absence appears to be seen as a more significant social problem than domestic violence. The positioning of violence as 'exceptional' - and of the hostile mother/aggrieved father dualism as a somehow typical scenario - does not reflect, she argues, the realities of what is known about the presence of violence within many marriages and, in particular, in the period following separation. n81 This theme is echoed in Kaganas's n82 analysis of the development of case-law on parental responsibility in England and Wales, which suggests that to warrant the description of 'bad father' a man must behave in some exceptionally callous ways; it is 'almost impossible to conceive of a father who is harmful to children unless he inflicts direct violence on them'. n83 In a more recent review of the development of case-law and policy, Kaganas and Day Sclater put the point starkly:

'... the dominant welfare discourse [has been] interpreted so as to create so strong an association between contact and welfare that neither risks to mothers' health nor, until recently, serious violence on the part of the non-resident father were regarded as sufficient reason to deny an order.' n84

Where does all this leave the arguments of Fathers 4 Justice? To summarise my argument thus far. A body of academic research, policy and professional literature has charted what appears to be an empowering of fathers as a result of the emergence, embedding and consolidation of the new welfare discourse. Research suggests fathers are accorded considerable significance. Indeed, fathers may have become so central to the new contact culture that it is the interests of mothers which have been downgraded or, in Fineman's term, 'neutered'. n85 There has occurred, Smart suggests, an 'erasure' of a moral discourse of care in relation to motherhood. n86

Does this mean, however, that Fathers 4 Justice are simply wrong? That they somehow exemplify an anti-feminist 'backlash' in family law and in society? Why is it felt - so strongly, and with such force - that law is systematically discriminating against men, given the presence of a body of research which seems to suggest that, if anything, the opposite is the case? Or are we dealing here, at its crudest, with a matter of 'false consciousness' on the part of these men? Men who are, in reality, truly empowered if only they were to realise it?

There is, of course, no 'one' divorce. Individual life-history and biography mediate the social experience of marriage and separation, child-birth and child-rearing. The question of why some men turn to and invest in the subject position of fathers' rights activist, and others do not, is beyond the scope of this paper. n87 We cannot ascertain from analysis of representations of law within fathers' rights discourse a knowledge of the cultural, economic and psychological investments individual men might make in adapting to (or, indeed, resisting) certain practices, attitudes and value systems as they come to engage with law in the aftermath of marriage. By looking closer at recent research concerned with the changing nature of post-divorce and separation family life it is possible, however, to find some answers to these questions. Something is happening in this area which is, I want to suggest, of considerable significance - and which it would be misleading to characterise simply as a 'reactionary' anti-feminist backlash on the part of men.

BEYOND BACKLASH: RETHINKING FATHERS' RIGHTS

Post-Separation Life: Gendered Rationalities, Gendered Lives

Empirical research into post-separation life, whether it be following marriage or cohabitation, n88 suggests that the prescriptions for good parenting to be found in law, along with related assumptions about what is best for children, have indeed 'entered parents' vocabularies ... [and are] routinely used by parents as a framework for understanding and talking about their experience'. n89 Kaganas and Day Sclater suggest, however, that although this might be accepted in the abstract both women and men 'actively interpret it according to their own criteria'. Law's prescriptions, in short, are not passively accepted. They are, rather, matters for 'active, often critical' n90 negotiation.

This point is of considerable significance in seeking to understand the changing status of fathers' rights agendas within debates about contact law. Drawing on a growing body of research concerned with the 'fluid, evolutionary' nature of post-separation life it is possible to make two points in this regard. First, research suggests, as above, that fathers are not alone in framing 'the meaning of the dispute in terms of a battle of the sexes'. n91 Feelings of injustice can be perceived by both women and men in terms of gender bias in law. That this should be so is, as Kaganas and Day Sclater observe, unsurprising. Parenting remains, for all the arguments made by fathers' rights groups to the contrary, a profoundly gendered activity. It is not 'adults' but predominantly mothers, for example, who tend to be depicted as 'sacrificing everything' for their children. It is women who are judged, held responsible and are seen to have failed, or succeeded, in the acting out of this duty of care in a way that most men arguably do not. Fathers continue to appear more ephemeral figures generally, 'family men' with a far more contingent relationship to the practical, everyday 'caring for' rather than 'caring about' of children. Law may thus be ascribing equal value to fathering and mothering. For many women, however, the recognition accorded to motherhood within the new contact culture does not reflect the reality of their greater responsibilities for day-to-day caring practices within the majority of post-separation households. The fact that Fathers 4 Justice should have secured a high public profile in a relatively short space of time raises different questions; not least about how class and access to social/cultural capital can mediate the way in which protest movements are constituted and come, in turn, to engage with the media. n92

Secondly, if it is the case that women and men frame their grievances via reference to the welfare of children, they would nonetheless appear to do so in ways which reflect their distinctive 'gendered lives' and what have been termed 'gendered rationalities'; via a recognition, that is, that questions of gender difference frame and mediate many aspects of social experience in relation to ideas of family life and parenting. n93 The way in which an emphasis on contact can clash with women's drive to 'independency' n94 within the post-separation context has been noted above. What is also becoming clear, however, is that the emergence of the new fatherhood might be reshaping men's interpretation and experiences of separation. The rhetorical devices and the arguments deployed by fathers' rights movement, as detailed above, would appear to resonate strongly with the discursive strategies at play within men's own negotiations and experiences of divorce and separation. Both, for example, are marked by such features as:

- . a denial, minimising or normalising of any conduct which, it is felt, might be subject to criticism; n95
- . a routine distinguishing of the 'good father' from those other men deemed 'bad' 'feckless' or 'deadbeat' fathers; n96
- . a belief that a good father – a man who identifies with this subject position – both would and should 'fight for' his children, given the messages conveyed within the new contact culture; n97 and
- . the deployment, noted above, of the 'bad mother' as a figure who, in failing the her children, further necessitates the presence of the father, if necessary by recourse to law.

Each of the above relate to far wider shifts in social attitudes to family life, parenting and around what is now considered to be acceptable behaviour on the part of men (whether it be within, or beyond, the home). Yet such issues of gender difference and social change give an indication as to why it should be men, in particular, who then display a greater propensity to evoke a rights discourse within the process of separation; and, in turn, engage in what has been termed a distinctive 'masculinised discourse' of divorce. n98 The form of the protests of groups such as Fathers 4 Justice can themselves be seen to be masculine in nature in this regard; public displays of physical endeavour, outward projects of an inner anger. n99 Aspects of the new fatherhood – what it involves, what it calls into being – appear to correlate with this tendency for men to relate to, and appeal in their engagements with law in terms of, a rights-based framework. It is, after all, what a 'good father' would do. n100 Law's prescriptions towards consensus, however, on closer examination clash in a number of respects with the emotional imperatives driving this engagement, not least in relation to the complex issue of conflict – an issue which informs what I want to suggest is the contradictory nature of the fathers' rights engagement with law.

Fatherhood, the Good Divorce and the Negation of Conflict

'It only takes one unreasonable person to kick over the apple stall.' n101

I have suggested that, on one level, there appears to be a series of mutual resonances between the welfare discourse and the arguments of Fathers 4 Justice. Conflating the interests of fathers and children, in particular, would appear an effective strategy in raising the profile of fathers' rights in engaging with policy makers and government. Yet looking closer the arguments of Fathers 4 Justice, and the fathers' rights movement more generally, stand in what is a far more ambivalent relationship to the welfare discourse than might at first appear to be the case – in particular in relation to the issue of emotion, the negation of conflict and the idea that contact and consensus between the parties is itself a somehow a priori social good. n102

Why is this so? The public protests of Fathers 4 Justice and the resulting visibility of the emotional imperatives driving them – the profound sense, for example, of injustice, anger, betrayal and loss on display (see further below) – clashes starkly, indeed violently at times, with an official discourse which suggests that divorce has now evolved into an arena somehow 'beyond politics'. n103 There is in this regard, rather curiously, a shared acceptance between fathers' rights organisations and their diverse critics that questions of equity, morality and politics cannot, in fact, be effaced from the debate around contact and divorce. For Fathers 4 Justice the dominant interpretation of the terms children's welfare and best interests of the children by judges, lawyers, mediators and welfare officers is seen to conceal a powerful moral agenda; one never explicitly acknowledged, but which is unjust to men in the way in which it fails to recognise the new realities of men's lives as fathers. What it is suggested the law also fails to 'see', however, and adequately to recognise, is the force, nature and consequences of such conflict around separation – and, in particular, the evolving psychological impact on men. It is precisely these psychological ambivalences of loss accompanying the end of human relationships which, Day Sclater has argued, jar in a more general sense – for both women and men – with the powerful rhetoric of the harmonious divorce central to the welfare discourse. n104

The dominant discourse, it is argued, has functioned in such a way as to negate the legitimacy of, and to deny the space to articulate, these conflictual feelings of loss, guilt and anger; emotions which, Brown and Day Sclater suggest, n105 almost inevitably accompany the process of divorce and the break up of family relationships. The psychological processes of separation, in other words, are enmeshed with the gendered rationalities discussed above in ways which, in turn, mediate how men and women experience divorce. This is evident, as above, in ways which appear to foster a view on the part of men that it is somehow the legal system that is to blame for what they are experiencing, that law itself is somehow 'at fault'. Yet the rise of fathers' rights agendas, in particular around this question of how men psychologically respond to divorce and separation, is an issue bound up with something else – what has become a broader shift in the nature of social relationships, not only between women and men, but also, importantly, between men and children.

Childhood, individualisation and change

The growing interest of fathers in issues of contact law reform has been linked with two interrelated processes; a broader rise of individualisation within society n106 and an interconnected refiguring of understandings of children and the idea of childhood. n107 The figure of the child has long been seen as the symbolic focus for questions of social stability and integration. These debates around childhood have encompassed (and certainly cannot be confined to) questions about the changing nature of adult interdependencies and, increasingly, issues of risk, anxiety and security associated with the safety of children. n108 Whereas children used to 'cling to us for guidance into their/our futures', now adults, in Jenks words 'cling to them for 'nostalgic' groundings because such change is both intolerable and disorienting for us. They are lover, spouse, friend, workmate and, at a different level, symbolic representations for society itself'. n109

Such shifts in relation to childhood are of considerable significance in seeking to understand fathers' rights. The relationship between men and children has, generally, become problematic in several respects. Hitherto normative ideas of masculinity, not least in relation to men's status in the family and paid employment, are widely perceived to have been fractured and reformed, contested and politicised as a result of shifts in women's paid employment. n110 While the extent of change in men's participation in domestic work and child care remains contested, research suggests that childhood may have assumed a different significance and duration within the life experience of many men; n111 and, as children demand a labour (cognitive, affective and manual) that stands in marked contrast to practices associated with ideas of 'good fatherhood' prevailing at earlier historical moments, n112 men's relationship to children has shifted. In such a context the figure of the child (indeed, the very body of the child – something to be 'owned', split 50/50?) would appear to have assumed a powerful experiential significance in providing meaning to many men's lives at a time of divorce and separation; a moment of life transition itself often marked by feelings of disorientating change and uncertainty, not least in relation to these issues of role and status in the family – the very concerns, it is important to recall, central to the

fathers' rights discourse.

It is in the light of these shifting adult investments that the sense of loss of the child experienced in the processes of divorce and separation would appear to be so keenly felt by many men. n113 This does not explain, however, why the consequences of this should then be projected with such force onto the perceived failings of the legal system and of family law more generally. It is in this regard that the dominant welfarist principle of care itself appears to further inform a sense of grievance and injustice on the part of fathers. In what way? The problematic positioning of the vulnerable child within the welfare discourse has been subject to extensive critical commentary. n114 Critics have noted, in particular, how children's voices have been interpreted, understood and processed in problematic ways. n115 The 'irrebuttable presumption' in favour of contact, it is argued, can itself run counter to the views and feelings of children. n116 Yet it would appear that the very ideal of co-parenting supported by law, far from being an unproblematic good, might serve to fuel conflicts between divorcing parents in certain circumstances, notably where it is perceived to be the product, not of a shared ideology, but of legal or financial coercion or other unresolved tensions; n117 tensions which, in the case of men participating in fathers' rights organisations, there is clearly reason to believe might, indeed, remain unresolved.

Far from reducing conflict, the legislative interventions discussed above have been linked to an increase in the frequency of disputes, n118 an issue which in turn relates to the psychological dimensions of separation for men and women discussed above. The way in which the divorce process is negotiated and experienced has been seen as part of the development of a broader 'project of the self' in the social conditions of late modernity. n119 The welfare discourse has been described as exemplifying a new mode of governmentality in society, one marked by a growing pressure to behave in standardised ways and to normative prescriptions. This is the context in which the 'good citizen' has been positioned, across a range of legal contexts (not just in family law), n120 as an information-seeking subject, an individual who will (given appropriate information/education) act in this case divorce) 'responsibly'. n121

The problem with this, it has been suggested, is that such pressure for private decisions to run on 'standard biography' lines can run counter to the psychological realities of separation discussed above. Men, like women, may for understandable psychological as well as practical/material reasons be focusing on the 'I' at a time when law is exhorting them to focus on the 'we'. Like women, men appear to be reinterpreting the neutral language of welfarism in terms of the lived realities of family life as it is experienced by them. n122 The problem, however, is that the very ideal of the new fatherhood bound up with the new contact culture is itself pervaded by some profoundly contradictory assumptions, not least about men's role as economic providers and carers, men simultaneously committed to their work, home and children. If that is the case it is no wonder, perhaps, that a sense of confusion would appear to pervade the grievances of the fathers' rights movement. Many men, recent theoretical and empirical research on fatherhood suggests, do indeed appear to be caught in a double-bind between these powerful discourses of provider/breadwinner and carer/nurturer; and, in turn, dealing with feelings of loss and vulnerability by recourse to appeals to discourses of equity, justice and rights. In such a context it becomes clearer to see perhaps why the appeal to a sense of belonging and community so effectively projected by Fathers 4 Justice and other fathers' rights organisations, as well as the emotions evoked and the argumentative strategies advanced, should appear so powerful, and to speak forcefully to, the lived experiences of significant numbers of men at the present moment.

CONCLUSIONS

The limits of law in the regulation and management of intimate relationships has been well-documented. In facing the 'normal chaos' n123 of family life, it is argued, law inevitably simplifies, reducing the insights of other disciplines to its own ends. n124 Law 'deals in generalities and is ill-equipped to take full account of the complexities of human behaviour'. n125 The open-ended, contradictory and double-edged nature of family law reform generally has been widely noted within legal scholarship. n126 There is much evidence that the present court system in England and Wales for dealing with contact disputes has serious faults; that it is, in particular, ill-adapted to deal with the difficult human dilemmas involved in the enforcement of its orders. The present conflicts described in this paper may thus, on one level, appear normal and inevitable features of what happens when law attempts to regulate human relationships.

There is, at the same time, much force to the argument that fathers' rights organisations have embraced and advocated a distinctive anti-feminist politics. The 'sex war' rhetoric common to much of the media reporting of the contact debate, both in the UK and elsewhere, strongly echoes the language of groups such as Fathers 4 Justice. Importantly, the fathers' rights discourse systematically effaces questions about the consequences of applying gender-neutral norms to what remain, for all the arguments advanced by Fathers 4 Justice to the contrary, highly gendered fields of practice. n127 It betrays a failure, in marked contrast to much recent feminist scholarship, n128 to engage with the conceptual basis of

the private family and broader questions about complexity and contradiction in law and legal regulation. Fatherhood itself tends to be understood largely within psychologistic, personal and individualised terms, devoid of any appreciation of the complex social and economic developments which now shape family practices.

Yet notwithstanding the above, I have argued in this article that it would be misleading to conceptualise what is taking place in this area as somehow simply illustrating or as symptomatic of an anti-feminist 'backlash' in the field of family law. Such an argument curiously mirrors the thinking of the fathers' rights lobby in the way in which it tends to evoke a uni-directional form of power (and, indeed, a central binary of the powerful/powerless mother/father).ⁿ¹²⁹ The contact debate, Rhodes has suggested, might more accurately be seen as exemplifying a new kind of political conflict in late modernity, one based around a struggle for the redistribution of inequalities.ⁿ¹³⁰ In seeking to make sense of recent developments I have sought to draw out some of the complexities of the present debate. I have explored, in particular, why fatherhood should have become such a contested issue in this area of law and in the way that it has. What may well be taking place in law is more generally is something akin to what might be termed a 'fragmentation' of fatherhood.ⁿ¹³¹ I have argued that, in this particular context, it is necessary to recognise the complexity and contradictory nature of the reconfiguration of gender relations framing the present debate about fathers and contact; and, following Smart,ⁿ¹³² acknowledge the 'different registers' of fathers' voices which may now be emerging around discourses of welfare, justice and, increasingly, care. This involves engaging with wider processes of social change involving (among other things) shifts in the structure and experience of employment, a reappraisal of issues of identity, commitment and responsibility and, in particular, a rethinking of the relationship between men and children.

There exist, I have argued, profound contradictions within the fathers' rights discourse and the new fatherhood ideal central to the new contact culture. This is evident in what 'good' fatherhood is seen to involve, the obligations, rights and responsibilities accruing to that status. Given the way in which the normalising processes underlying the 'saving marriages' ideal has involved a pathologising of divorce, it is perhaps understandable that divorcing individuals should so often appear to be caught up within a maelstrom of competing discourses. The way in which fathers' rights organisations relate to and engage with law is illustrative of these broader tensions, not least in the slippage, noted above, between narratives of welfare, justice and care. The relationship of fathers' rights organisations to the welfare discourse in particular is, I have argued, more ambivalent than might at first appear to be the case. This is evident in the way in which the emotional imperatives driving these protests sit uneasily with a dominant discourse focused on ideas of consensus. This negation of emotion echoes the more general assumption, noted within a growing body of law and society scholarship, that law is a phenomenon and social practice in which emotion is deemed to have little or no place.ⁿ¹³³

The fathers' rights engagement with law powerfully counters any such assumption for it is, in essence, concerned with emotion. In the experiences of men in dealing with the courts and lawyers, in the form and content of the reform campaigns and the protests, a range of conflictual emotions appear as the 'very stuff' of fathers' rights politics; anxiety, anger, compassion, disgust, enmity, fear, guilt, hate, humour, love, pleasure, remorse, resentment, sadness, shame.ⁿ¹³⁴ Such emotions are as powerful as they are contradictory in how they relate to law in these debates. Law is simultaneously 'loved and loathed', desired and rejected. It is inadequate. Legal agents are decried for their failures in 'emotional management'. Yet, at the same time, more law is called upon. Law does not simply embody violence.ⁿ¹³⁵ Law does violence in the way in which it tears asunder the 'sacred bond' between father and child. And, simultaneously, more coercion, more violence from law is called for. Emotion is central to the articulation of the political strategy of the fathers' rights movement. While the study of emotions has been explored in some detail in the context of criminal law and criminal justice studies,ⁿ¹³⁶ however, the contradictory and ambivalent relation between law and emotion in the field of family law is an arguably less developed terrain. Such engagements might shed further light on the shifting narratives deployed by the fathers' rights movement and help account for the passion and frequently anger driving the campaigns – emotions which appear to cut-across appeals from elsewhere for these men to reconsider their actions and to act in more rational, responsible, reasonable ways.

To conclude. There is considerable evidence to suggest that the fathers' rights movement has, across jurisdictions, shaped and influenced the broader cultural context in which debates about family law are now taking place; that they have, in particular, created a pressure to reform the system.ⁿ¹³⁷ More research is needed on whether the rearticulation of narratives of justice, care and welfare by fathers might be reflecting the emergence of a different consciousness on the part of men; or, far from any such (pro-feminist?) 'embrace of responsibility', whether what might be happening is in fact a more familiar articulation of an essentially self-interested form of power.ⁿ¹³⁸ Yet ultimately, as Day Sclater has argued, perhaps real change in this area will require that parents 'of whatever gender' engage with these questions of emotion and:

'... find better ways of dealing with the vulnerabilities that separation throws up. We must learn to grieve our losses without acting out or dumping on the children. We can't go on disowning our feelings, imagining that our children, not us, are the vulnerable ones... These are the displaced emotions that fuel legal battles. That's why changing the law won't solve the real problems that fathers face. Solving those is much more difficult, because it means confronting ourselves.' n139

This article supports the claims of those who have suggested that the new fatherhood ideology has led in practice to a devaluing of the social importance of mothers and mothering. It is unlikely that the issue of fathers' rights will 'go away'. In the light of the arguments presented in this paper it is possible that these issues will be with us for some time and may well, indeed, intensify in years to come.

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FOOTNOTES:

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n1 This article is based on an address delivered to the Feminism, Law and Social Change: (Re)Action and Resistance Conference, University of British Columbia, May 2004. A version of this paper was later delivered at the Society for Legal Scholars Annual Meeting, September 2004 and the Canadian Law and Society Association Annual Meeting, June 2005. I would like to thank all who participated for their comments. I would also like to acknowledge the support of an AHRB Research Leave Scheme award [Ref: AN 8065/APN 16739] in funding the leave period during which research for this paper was conducted. JWalsh, "Revenge of the Angry Fathers" reported in *The Independent* (Review), 5 February 2004.

n2 Matt O'Connor, founder of Fathers 4 Justice, reported in *The Guardian*, 3 February 2004.

n3 AGiddens, *The Transformations of Intimacy* (Polity, 1992). See also UBeck and EBeck Gernsheim, *The Normal Chaos of Love* (Polity, 1995).

n4 DMorgan, 'Risk and Family Practices: Accounting for Change and Fluidity in Family Life' in ESilva and CSmart (eds), *The 'New' Family?* (Sage, 1999); DMorgan, *Family Connections: An Introduction to Family Studies* (Polity, 1996).

n5 There has occurred, more generally, a significant growth in the study of fatherhood. See, for a flavour of this work: DLupton and LBarclay, *Constructing Fatherhood: Discourses and Experiences* (Sage, 1997); BHobson (ed), *Making Men into Fathers: Men, Masculinities and the Social Politics of Fatherhood* (Cambridge University Press, 2002); BFeatherstone, 'Taking Fathers Seriously' (2003) 33 (2) *British Journal of Social Work* 239; NDowd, *Redefining Fatherhood* (New York University Press, 2000); MLamb (ed), *The Role of the Father in Child Development* (John Wiley, 2003); RLarossa, *The Modernization of Fatherhood: A Social and Political History* (University of Chicago Press, 1997); ADienhart, *Reshaping Fatherhood* (New York University Press, 1998); ABurgess, *Fatherhood Reclaimed: The Making of the Modern Father* (Vermillion, 1997); RParke, *Fatherhood* (Harvard University Press, 1996); MO'Brien and IShemilt, *Working Fathers: Earning and Caring* (Equal Opportunities Commission, 2002); EFlouri *Fathering and Child Outcomes* (John Wiley, 2005); JLewis and EWelsh, 'Fathering Practices in Twenty-Six Intact Families and their Implications for child contact' (2005) 1 (1) *International Journal of Law in Context* 81; RCollier, 'A Hard Time To Be a Father?: Law, Policy and Family Practices' (2001) 28 *Journal of Law and Society* 520; WMarsiglio (ed), *Fatherhood: Contemporary Theory, Research and Social Policy* (Sage, 1995); WMarsiglio, PAmato, RDDay and MELamb, 'Scholarship on Fatherhood in the 1990s and Beyond' (2000) 62 *Journal of Marriage and the Family* 1173; AJDawkins and DCDollahite (eds), *Generative Fathering: Beyond Deficit Perspectives* (Sage, 1997); NJCabera, CSTamis-Lemonda, RHBradley, SHofferth and MELamb, 'Fatherhood in the Twenty-First Century' (2000) 71 *Child Development* 127; JTrowell and AEtchegoyen, *The Importance of Fathers* (Brunner Routledge, 2001); CLewis, *A Man's Place in the Home: Fathers and Families in the UK* (Joseph Rowntree Foundation, 2000); LBurghes, LClarke, and NCronin, *Fathers and Fatherhood in Britain* (Family Policy Studies Centre, 1997); AHochschild, 'Understanding the Future of Fatherhood' in Mvan Dongen, GFrinking and MJacobs (eds), *Changing Fatherhood* (Thesis Publishers, 1995); JMitchell and JGoody, 'Feminism,

Fatherhood and the Family in Britain' in AOakley and JMitchell (ed), *Who's Afraid of Feminism? Seeing Through the Backlash* (Hamish Hamilton, 1997).

n6 See further work cited below, at n 49.

n7 See further <http://www.fathers-4-justice.org/>.

n8 'Our Pledge', available at http://www.fathers-4-justice.org/our_pledge/index.htm, emphasis added.

n9 See, generally: MMessner, *Politics of Masculinities: Men in Movements* (Sage, 1997); MFlood, 'Men's Movements' (1998) 46 *Community Quarterly* 62; RCollier, 'Coming Together?': Post-Heterosexuality, Masculine Crisis and the New Men's Movement' (1996) 4 (1) *Feminist Legal Studies* 3.

n10 At the same time it is important to differentiate the views of fathers' rights groups from those of 'fathers' in any more general sense. See further AGavanas, 'The Fatherhood Responsibility Movement: The Centrality of Marriage, Work and male Sexuality in Reconstructions of Masculinity and Fatherhood' in BHobson (ed), *Making Men into Fathers: Men, Masculinities and the Social Politics of Fatherhood* (Cambridge University Press, 2002); Compare WFHorn, DBlakenhorn and MBPearlstein, *The Fatherhood Movement: A Call to Action* (Lexington Books, 1999). Fathers 4 Justice describe themselves as 'a new civil rights movement campaigning for a child's right to see both parents and grandparents ... [We] have adopted a twin track strategy based around publicity and press. Raising awareness through publicity 'making the injustice visible' and mobilising a 'dads army' - applying pressure to the system and MP's to bring around meaningful change and enforce the will of Parliament', see <http://www.fathers-4-justice.org/introducing/index.htm>. The organisational form and function of Fathers 4 Justice is noticeably different, in particular, to the more well-established Families Need Fathers (<http://www.fnf.org.uk>). See also, in the UK context, the Equal Parenting Council (<http://www.equalparenting.org>) and Dads After Divorce (<http://www.c-g.org.uk/about/dads.htm>). The former, notwithstanding a lower public profile, have been significant, arguably more so than Fathers 4 Justice, in influencing policy discussion in the UK. Internationally, note JGeary and AGhosh, 'In The Name of the Fathers', reported in *Time Magazine*, 27 September 2004.

n11 Essentially pressure group organisations, as above, are distinct from government-funded bodies such as Fathers Direct - the National Information Centre on Fatherhood (<http://www.fathersdirect.com>). It is also important to note the role of individuals in this area, for example: OCyriax 'Bill within a Bill makes bad law' reported in *The Times*, 2 May 2000; Information on Probation Officers in Welfare Work (INPOWW), *The Family Court Welfare Service & The Family Division: A Question of Abuse* (INPOWW, 1998).

n12 See further the data analysis produced by Reputation Intelligence, *F4J Heralds a New Era in Political Campaigning: Media Report* (Reputation Intelligence, 2004). Fathers 4 Justice see media coverage as a key indicator of the success of their protests: note, for example, JWalsh, 'Revenge of the Angry Fathers' reported in *The Independent* (Review), 5 February 2004; JGilchrist, 'Outlaw Fathers fight Back' reported in *The Scotsman*, 29 May 2003; GHinsliff, 'Militant Fathers will risk jail over rights to see their children', reported in *The Observer*, 20 April 2003; 'Fathers' Rights Protest on Court Roof' Press Association (PA News), 18 May 2004; 'Unholy Fathers in Church' reported in *The Sun*, 12 July 2004; SDominus, 'The New Fathers Crusade' reported in the *New York Times*, 8 May 2005.

n13 'The group comprises Fathers, Mothers, Grandparents, Teachers, Doctors, Company Directors, Policemen, Barristers - a complete cross section of society': <http://www.fathers-4-justice.org/introducing%20f4j/index.htm> (although see FKaganas and CPiper, 'Grandparents and Contact: Rights versus Welfare Revisited' (2001) 15 *International Journal of Law, Policy and the Family* 250). Some Fathers 4 Justice activists (for example, Matt O'Connor, Jason Birch and David Chick) have themselves become public figures as a result of their involvement in the protests. Chick, who held a vigil in a crane over Tower Bridge in London in November 2003, was subsequently voted second in a BBC Radio 4 Poll for 'Man of the Year 2003' (reported in the *Independent* on Sunday 8 February 2004). At the time of writing, personal and political tensions within Fathers 4 Justice have surfaced: SLaville, 'Batman and Robin Quit Protest Group' reported in *The Guardian*, 9 June 2005 ('You've Heard of the Real IRA. Now meet Real Fathers4Justice, the caped crusaders who refuse to give up the fight').

n14 *The Rising: Outlaw Fathers Fight Back* (October 2003); *The McDad Day Demo* (planned for June 2005, subsequently cancelled, see SLaville, *ibid*).

n15 'We are going to target solicitors, members of the judiciary and barristers and we have a list of the people

we are looking at': Peter Molly, activist, reported in *The Guardian*, 3 February 2004. On 13 September 2004 Fathers 4 Justice breached security at Buckingham Palace, prompting widespread media coverage of the aims and objectives of the organisation: see further Reputation, F4J Heralds a New Era in Political Campaigning: Media Report (Reputation Intelligence, 2004).

n16 'Blair Hit During Commons protest' reported on the BBC News, 19 May 2004. This attack prompted MPs to evacuate the chamber and resulted in the arrest of two Fathers 4 Justice activists: 'They were fighting for equal rights for dads. Purple is the international colour of equality'.

n17 Reported in the *Independent* on Sunday, 7 February 2004.

n18 Ibid.

n19 Following the publication of the Green Paper, Supporting Families: A Consultation Document (HMSO, 1998), note in particular: Lord Chancellor's Advisory Board on Family Law, Children Act Sub-Committee, Consultation Paper on Making Contact Work: The Facilitation of Arrangements For Contact Between Children and Their Non-Residential Parents and the Enforcement of Court Orders for Contact (HMSO, 2001); Lord Chancellor's Advisory Board on Family Law, Children Act Sub-Committee, Making Contact Work: A Report to the Lord Chancellor on the Facilitation of Arrangements For Contact Between Children and Their Non-Residential Parents and the Enforcement of Court Orders for Contact (HMSO, 2002); Lord Chancellor's Advisory Board on Family Law, Children Act Sub-Committee, Consultation Paper on Contact Between Children and Violent Parents: The Question of Parental Contact in Cases where there is Domestic Violence (HMSO, 1999); PHarris, 'Contact and domestic violence: a response from Peter Harris, the Official Solicitor' (1999) 158 *Childright* 16.

n20 'Fathers are victims of failing justice system says judge' reported in *The Times*, April 2 2004.

n21 BGeldof, 'The Real Love that Dare Not Speak Its Name' in ABainham, BLindley, MRichards and LTrinder (eds), *Children and Their Families* (Hart, 2003). Interestingly, recent government reforms (below) were announced during a Ministerial interview with Bob Geldof on BBC Radio 4: Media Monitoring Unit: Transcript The Today Programme 3 April 2004 (GICS, 2004). See also 'Bob's Message to Families Need Fathers' available at: <http://www.fnf.org.uk/bobg.htm>

n22 Much discussion has focused on the ethics and efficacy of the protests as a form of 'gesture politics': APhillips, 'Most Fathers get Justice' reported in *The Guardian*, 13 October 2004.

n23 Reported in *The Guardian*, 3 April 2004.

n24 See Parental Separation: Children's Needs and Parents' Responsibilities, Cm 6273 (HMSO, 2004) launched on 21 July 2004 and published by the Department for Education and Skills, the Department for Constitutional Affairs and the Department for Trade and Industry. On 18 January 2005 the government published Parental Separation: Children's Needs and Parents' Responsibilities, Next Steps, Cm 6452 (HMSO, 2005) setting out a summary of responses received to the consultation and outlines the agenda for action which the government plans to implement over coming months. It is stated that over 250 responses were received to the consultation, 'with the majority welcoming the general direction of the Green Paper'.

n25 See Putting Children First: Parenting Plans, a Planner for Separating Parents (DCA, 2005). Launched 19 January 2005, the consultation on parenting plans is designed 'to help separated and divorced parents reach agreement amicably about contact and residence issues for their children': <http://www.dfes.gov.uk/childrensneeds/>; cf 'New Access Plan for Fathers' reported in *The Guardian*, 17 February 2004; 'Law to help fathers in child contact cases' reported in *The Guardian*, 19 January 2005; 'Divorce Mediation Scheme Flops' reported in *The Guardian*, 27 June 2005.

n26 'Fathers Spurn Plan to Save Parents from Court Battles' reported in *The Guardian*, 20 March 2004.

n27 http://www.fathers-4-justice.org/campaign_objectives/index.htm

n28 Although the Children Act 1989 states that the welfare of the child is best served by maintaining a relationship with both parents as far as possible, there is no statutory 'right' to contact in the legislation.

n29 'Some fathers' groups have come to believe that the courts and the law are biased against them. We do not accept this view': Parental Separation: Children's Needs and Parents' Responsibilities, Cm 6273 (HMSO, 2004),

'Ministerial Forward' at p 1, emphasis added.

n30 For example, CSmart, VMay, AWade and CFurniss, *Residence and Contact Disputes in Court: Research Report 6/2003* (Department for Constitutional Affairs, 2003), a study of disputes over residence and contact brought to three county courts in England in the year 2000, cited by Margaret Hodge, Hansard, HC Debates, col67W (5 Jan 2004); MMaclean, 'The contribution of the international research community to UK law reform re child contact', paper presented at the Annual Meeting of the Research Committee of the Sociology of Law, ISA, Paris 11–13 June 2005.

n31 Contrast CGrbich, 'Male primary caregivers and domestic labour: involvement or avoidance?' (1995) 1 (2) *Journal of Family Studies* 114; JBrannen, GMeszaros, PMoss and GPoland, *Employment and Family Life: A Review of Research in the UK (1980–1994): Department of Employment Research Series No. 4* (University of London, 1994); HBradley, 'Gender and Change in Employment: Feminization and its Effects' in RKBrown (ed), *The Changing Shape of Work* (Macmillan, 1997).

n32 See further FKaganas and CPiper, 'Shared Parenting – a 70% Solution?' [2002] *CFLQ* 365.

n33 Note generally, for example: ABainham, 'Contact as a fundamental right' (1995) 54 *Cambridge Law Journal* 255; SJolly, 'Implacable Hostility, Contact and the Limits of the Law' [199] *CFLQ* 228; cfCWillbourne and JGeddes, 'Presumption of Contact: What Presumption?' [1995] *Fam Law* 87; 'I have had to send a parent to prison and it doesn't achieve anything. Also it may affect the child who feels to blame if mummy goes to prison', Justice Bracewell reported in *The Guardian*, 22 October 2003.

n34 APerry, GDouglas, MMurch, KBader and MBorkowski, *How Parents Cope Financially On Marriage Breakdown* (Joseph Rowntree Foundation, 2000).

n35 Matt O'Connor, reported in *The Independent* on Sunday, 8 February 2004.

n36 FKaganas and SDay Sclater, 'Contact Disputes: Narrative Constructions of "Good Parents"' (2004) 12 (1) *Feminist Legal Studies* 1; see also, SDay Sclater and FKaganas, 'Contact: Mothers, Welfare and Rights' in ABainham, BLindley, MRichards and LTrinder (eds), *Children and Their Families* (Hart, 2003).

n37 Kaganas and Day Sclater, *ibid*, at pp 2–3.

n38 Involving, for example, psychologists, family welfare professionals, lawyers, geographers and economists. The term 'family policy' is itself, of course, deeply contested: LFox–Harding, *Family, State and Social Policy* (Macmillan, 1996).

n39 FKaganas and SDay Sclater, *op cit*, n 36, 2004.

n40 See: BRodgers and JPryor, *Divorce and Separation: Outcomes for Children* (Joseph Rowntree Foundation, 1998); JPryor and BRodgers, *Children in Changing Families: Life after Parental Separation* (Blackwell, 2001). Contrast CPiper, 'Divorce Reform and the Image of the Child' (1996) 23 (3) *Journal of Law and Society* 364; BNeale and CSmart, 'In Whose Best Interests? Theorising Family Life Following Parental Separation or Divorce' in SD Sclater and CPiper (eds), *Undercurrents of Divorce* (Ashgate, 1999).

n41 See further HReece, *Divorcing Responsibly* (Hart, 2003); also CPiper, *The Responsible Parent* (Harvester Wheatsheaf, 1993).

n42 See CSmart and BNeale, *Family Fragments*, (Cambridge, 1999); BNeale and CSmart, 'Experiments with parenthood?' (1997) 31 (2) *Sociology* 201; CSmart and BNeale, 'Good enough Morality? Divorce and Postmodernity' (1997) 17 (4) *Critical Social Policy* 3.

n43 CSmart, 'Wishful thinking and harmful; tinkering? Sociological reflections on family policy' (26) 3 *Journal of Social Policy* 1.

n44 GPascall, 'UK family policy in the 1990s: the case of new labour and lone parents' (1999) 13 *International Journal of Law, Policy and the Family* 258. See also GDavis and JPearce, 'On the trail of the welfare principle' [1999] *Fam Law* 144; GDavis and JPearce, 'The welfare principle in action' [1999] *Fam Law* 237; JHerring, 'The Human Rights Act and the Welfare Principle in Family Law – Conflicting or Complementary?' [1999] *CFLQ* 223; J Roche, 'The Children Act: Once a Parent, Always a Parent' (1991) 5 *Journal of Social Welfare Law* 345; FKaganas,

MKing, and CPiper (eds), *Legislating for Harmony: Partnership under the Children Act 1989* (Arena, 1995). On developments in the US context see the excellent account of JCarbone, *From Partners to Parents: The Second Revolution in Family Law* (Columbia University Press, 2000).

n45 CSmart, 'The 'New' Parenthood: Fathers and Mothers After Divorce' in ESilva and CSmart (eds), *The New Family?* (Sage, 1999); CSmart and BNeale, 'I Hadn't Really Thought About It': New Identities/New Fatherhoods' in JSeymour and PBagguley (eds), *Relating Intimacies: Power and Resistance* (Basingstoke, 1999); JDrakich, 'In Search of the Better Parent: The Social Construction of Ideologies of Fatherhood' (1989) 3 *Canadian Journal of Women and the Law* 69. Compare AJames and MRichards, 'Sociological perspectives, family policy and children: Adult thinking and sociological tinkering' (1999) 21 (1) *Journal of Social Welfare and Family Law* 23.

n46 See further SBoyd, 'Backlash and the Construction of Legal Knowledge: The Case of Child Custody Law' (2001) 20 *Windsor Yearbook of Access to Justice* 141. Generally, SBoyd, *Child Custody, Law and Women's Work* (Oxford, 2003); KKurki-Suonio, 'Joint Custody as an interpretation of the best interests of the child in critical and comparative perspective' (2000) 14 (3) *International Journal of Law, Policy and the Family* 183; MKing, 'Foreword' in SD Sclater and CPiper (eds), *Undercurrents of Divorce* (Ashgate, 1999), at p x; JRodger, 'Family Policy or Moral Regulation?' (1995) 15 (1) *Critical Social Policy* 5; cf M Fineman, 'Dominant Discourse, Professional Language, and Legal Change in Child Custody Decision making' (1988) 101 *Harvard Law Review* 727. Note also CSmart and VMay, 'Residence and Contact Disputes in Court' [2004] *Fam Law* 36.

n47 HReece, 'The Paramouncy Principle: Consensus or Construct' (1996) 49 *Current Legal Problems* 267.

n48 On differences between Canada and Australia see HRhoades and SBoyd, 'Reforming Custody Laws: A Comparative Study' (2004) 18 *International Journal of Law, Policy and the Family* 119. Note also JCohen and NGershain, 'For the sake of fathers? Child custody reform and the perils of maximum contact' (2001) 19 *Canadian Family Law Quarterly* 121; HRhoades, 'Posing as Reform? The Case of the Family Law Reform Act' (2000) 14 (2) *Australian Journal of Family Law* 142; HRhoades, RGraycar and MHarrison, *The Family Law Reform Act 1995: The First Three Years* (University of Sydney/The Family Court of Australia, 2002)

n49 MKaye and JTolmie, 'Fathers' Rights Groups in Australia and their engagement with issues in Family Law' (1998a) 12 *Australian Journal of Family Law* 12; MKaye and JTolmie, 'Discoursing Dads: The Rhetorical Devices of Fathers' Rights Groups' (1998a) 22 *Melbourne University Law Review* 162; JArduini and KAllen, 'Distressed fathers' perceptions of legal and relational inequities post-divorce' (1993) 31 *Family and Conciliation Courts Review* 461; CBerotia and JDrakich, 'The Fathers' Rights Movement: contradictions in rhetoric and practice' (1993) 14 (4) *Journal of Family Issues* 592; SBoyd and CFYoung, 'Who Influences Family Law Reform? Discourses on Motherhood and Fatherhood in Legislative Reform Debates in Canada' (2002) *Studies in Law, Politics and Society* 43; RGraycar, 'Law Reform by Frozen Chook: Family Law Reform for the New Millennium?' (2000) 24 *Melbourne University Law Review* 737; AMelville and RHunter, 'As Everybody knows: Countering Myths of Gender Bias in Family Law' (2001) 1 (1) *Griffith Law Review* 124; RGraycar, 'Equal Rights versus fathers' Rights: The Child Custody Debate in Australia' in CSmart and SSevenhuijsen (eds), *Child Custody and the Politics of Gender* (Routledge, 1989); CBerotia, 'An interpretative analysis of the mediation rhetoric of Fathers' Rightists: Privatization versus Personalization' (1998) 16 (1) *Mediation Quarterly* 15; SBoyd, 'Demonizing Mothers: Fathers' Rights Discourses in Child Custody Law Reform processes' (2004) 6 (1) *Journal of the Association for Research in Mothering* 52; LNeilson, 'Demeaning, Demoralizing and Disenfranchising Divorced Dads: A Review of the Literature' (1999) 31 (3/4) *Journal of Divorce and Remarriage* 129; MKaye and JTolmie, 'Lollies at a Children's Party' and Other Myths: Violence, Protection Orders and fathers' Rights Groups' (1998b) 10 (1) *Current Issues in Criminal Justice* 52.

n50 MKaye and JTolmie, 'Discoursing Dads: The Rhetorical Devices of Fathers' Rights Groups' (1998a) 22 *Melbourne University Law Review* 162, at p 164.

n51 Thus reconstructing fathers' rights as a progressive discourse via an adoption of the language of the militant, the oppressed – of the 'outlaw' (father) as the 'true' voice of liberty and freedom.

n52 CSmart and BNeale, 'I Hadn't Really Thought About It': New Identities/New Fatherhoods' in JSeymour and PBagguley (eds), *Relating Intimacies: Power and Resistance* (Basingstoke, 1999).

n53 MKaye and JTolmie, *op cit*, n 50, at p 172; SBoyd and CFYoung, *op cit*, n 49, at pp56–57.

n54 Ibid, at p 177; http://www.fathers-4-justice.org/the_evidence/index.htm.

n55 Ibid, at p 175; SBoyd and CFYoung, op cit, n 49, at p59.

n56 MKaye and JTolmie, op cit, n 49, at p 178.

n57 RCollier, 'A Hard Time To Be a Father?: Law, Policy and Family Practices' (2001) 28 *Journal of Law and Society* 5201 MKaye and JTolmie, op cit, n 49, at p 181.

n58 SBoyd, op cit, n 49, at p 55-56. See, for example, the arguments of DBlakenhorn, *Fatherless America: Confronting Our Most Urgent Social Problem* (Basic Books, 1995); NDennis and GERdos, *Families Without Fatherhood* (Institute of Economic Affairs, 1993). Contrast CRDaniels (ed), *Lost Fathers: The Politics of Fatherlessness* (Macmillan, 1998).

n59 MKaye and JTolmie, op cit, n 50, at p 184.

n60 SBoyd, op cit, n 49, at p 58.

n61 SBoyd, 'Demonizing Mothers: Fathers' Rights Discourses in Child Custody Law Reform processes' (2004) 6 (1) *Journal of the Association for Research in Mothering* 52, at p 60. Note, for example, the accusations of misogyny which have surfaced in debates about the political direction of Fathers 4 Justice during 2005; see SLaville, 'Batman and Robin Quit Protest Group' reported in *The Guardian*, 9 June 2005.

n62 MKaye and JTolmie, 'Discoursing Dads: The Rhetorical Devices of Fathers' Rights Groups' (1998a) 22 *Melbourne University Law Review* 162, at p 185

n63 Ibid, at p 186; SBoyd and CFYoung, 'Who Influences Family Law Reform? Discourses on Motherhood and Fatherhood in Legislative Reform Debates in Canada' (2002) *Studies in Law, Politics and Society* 43, at p 58.

n64 Ibid, at p 188; CBerotia and JDrakich, 'The Fathers' Rights Movement: contradictions in rhetoric and practice' (1993) 14 (4) *Journal of Family Issues* 592, at p 603. .

n65 Fathers 4 Justice suggest 'Fathers have struggled to adapt to a brave new world where they have effectively been replaced by the state as the protector and provider to their children': http://www.fathers-4-justice.org/our_pledge/index.htm.

n66 http://www.fathers-4-justice.org/the_legacy/index.htm. Contrast JStacey, 'Dada-ism in the 1990s: Getting Past Baby Talk about Fatherlessness' in CRDaniels (ed), *Lost Fathers: The Politics of Fatherlessness in America* (New York University Press, 1998).

n67 RCollier, *Masculinity, Law and the Family* (Routledge, 1995).

n68 CSmart and BNeale, "I Hadn't Really Thought About It: New Identities/New Fatherhoods' in J Seymour and PBagguley (eds), *Relating Intimacies: Power and Resistance* (Basingstoke, 1999), at p123.

n69 See further C.Lewis, *A Man's Place in the Home: Fathers and Families in the UK* (Joseph Rowntree Foundation, 2000); JWarin, YSolomon, CLewis and WLangford, *Fathers, Work and Family Life* (Joseph Rowntree Foundation/Family Policy Studies Centre, 1999); GDench, *Exploring Variations in Men's Family Roles: Joseph Rowntree Foundation Social Policy Research Findings No 99*, (Joseph Rowntree Foundation, 1996); PMoss (ed), *Father Figures: Fathers in the Families of the 1990s*, (HMSO, 1995).

n70 CSmart and BNeale, op cit, n 68.

n71 MFineman, *The Neutered Mother, The Sexual Family and Other Twentieth Century Tragedies* (Routledge, 1995).

n72 In addition to work cited above, at n 49, see also: RBailey-Harris, JBarron, and JPearce, 'From utility to rights? The presumption of contact in practice' (1999) 13 *International Journal of Law, Policy and the Family* 111; CSmart and BNeale, 'Arguments Against Virtue: Must Contact Be Enforced?' [1997] *Fam Law* 332; I Weyland, 'Judicial Attitudes to Contact and Shared Residence since the Children Act 1989' (1995) *Journal of Social Welfare and Family Law* 445.

n73 CBruch, 'Parental Alienation Syndrome and Alienated Children - Getting it Wrong in Child Custody Cases'

[2002] CFLQ 381; CWilliams, 'Parental Alienation Syndrome' [2002] Fam Law 410; JMasson, 'Parental Alienation Syndrome' [2002] Fam Law 568; cf SMaidement, 'Parental Alienation Syndrome – A Judicial Response?' [1998] Fam Law 264; JRosenblatt and PScragg, 'The Hostile Parent: A Clinical Analysis' [1995] Fam Law 152.

n74 See further CSmart and BNeale, 'I Hadn't Really Thought About It': New Identities/New Fatherhoods' in JSeymour and PBagguley (eds), *Relating Intimacies: Power and Resistance* (Basingstoke, 1999).

n75 Ibid, at p 118. Contrast JWarin, YSolomon, CLewis and WLangford, *Fathers, Work and Family Life* (Joseph Rowntree Foundation/Family Policy Studies Centre, 1999); JBernard, 'The Good-Provider Role: It's Rise and Fall' (1981) 36 *American Psychologist* 1. See further DLupton and LBarclay, *Constructing Fatherhood: Discourses and Experiences* (Sage, 1997), at p 146.

n76 FKaganas and SDay Sclater, 'Contact Disputes: Narrative Constructions of 'Good Parents'' (2004) 12 (1) *Feminist Legal Studies* 1, at p 13.

n77 In addition to work cited above, n 48: HRhoades, 'The 'Non Contact Mother': Reconstructions of Motherhood in the Era of the New Father' (2002a) 16 *International Journal of Law, Policy and the Family* 72; HRhoades, 'The Rise of Shared Parenting Laws – a critical reflection' (2002b) 19 *Canadian Journal of Family Law* 75.

n78 See, for example, DGreatbatch and RDingwall, 'The marginalization of domestic violence in divorce mediation' (1999) *International Journal of Law, Policy and the Family* 174; FKaganas and CPiper, 'Contact and Domestic Violence' in SD Sclater and CPiper (eds), *Undercurrents of Divorce* (Ashgate, 1999); CHumphries and CHarrison, 'Squaring the Circle-Contact and Domestic Violence' [2003] Fam Law 419; FKaganas, 'Contact, Conflict and Risk' in S Day Sclater and CPiper (eds), *ibid*; JHall, 'Domestic Violence and Contact' [1997] Fam Law 813; CSturge, in consultation with DGlaser, 'Contact and Domestic Violence – The Expert's Court Report' [2000] Fam Law 615. See further RBAiley-Harris, JBarron, and JPearce, 'From utility to rights? The presumption of contact in practice' (1999) 13 *International Journal of Law, Policy and the Family* 111; CSmart and BNeale, 'Arguments Against Virtue: Must Contact Be Enforced?' [1997] Fam Law 332; Advisory Board on Family Law, Children Act Sub-Committee, *A Consultation Paper on Contact Between Children and Violent Parents: The Question of Parental Contact in Cases where there is domestic violence* (Lord Chancellor's Department, 1999); MHester and LRadford, *Domestic Violence and Child Contact Arrangements in England and Denmark* (Policy Press, 1996); MHester and CPearson, *From Periphery to Centre: Domestic Violence in Work with Abused Children* (Policy Press, 1998); MHester, CPearson and JRadford, *Domestic Violence: A National Survey of Court Welfare and Voluntary Sector Mediation Practice* (Policy Press, 1997). On recent developments in Australia see MKaye, JStubbs and JTolmie, 'Domestic Violence and Child Contact Arrangements' (2003) 17 *Australian Journal of Family Law* 93.

n79 See, for example, the work of CSmart and BNeale, *Family Fragments*, (Cambridge, 1999); BNeale and CSmart, 'Experiments with parenthood?' (1997) 31 (2) *Sociology* 201; CSmart and BNeale, 'Good enough Morality? Divorce and Postmodernity' (1997) 17 (4) *Critical Social Policy* 3.

n80 See further SDay Sclater, *Divorce: A Psycho-Social Study* (Ashgate, 1999), below. A theme which emerges in some media reporting of Fathers 4 Justice activists: 'Jason [Birch] is so busy fighting to see his other kids he spends no time with ours' reported in *The Sun*, 15 September 2004.

n81 HRhoades, 'The 'Non Contact Mother': Reconstructions of Motherhood in the Era of the New Father' (2002a) 16 *International Journal of Law, Policy and the Family* 72. It is important to recognise in this context incidents where men have responded to the loss of their children when their wife leaves the home by killing the children: MMcDonagh, 'The hidden anger that can kill a whole family' reported in the *Sunday Times*, 8 February 2004.

n82 FKaganas, 'Contact, Conflict and Risk' in SD Sclater and CPiper (eds), *Undercurrents of Divorce* (Ashgate, 1999).

n83 FKaganas and CPiper, 'Contact and Domestic Violence: The Winds of Change?' [2000] Fam Law 630.

n84 FKaganas and SDay Sclater, 'Contact Disputes: Narrative Constructions of 'Good Parents'' (2004) 12 (1) *Feminist Legal Studies* 1, at pp 6-7, footnotes omitted.

n85 MFineman, *The Neutered Mother, The Sexual Family and Other Twentieth Century Tragedies* (Routledge, 1995).

n86 CSmart, 'Losing the Struggle for Another Voice: The Case of Family Law' (1995) 18 (2) *Dalhousie Law Journal* 173; SColtrane and NHickman, 'The Rhetoric of Rights and Needs: Moral Discourse in the Reform of Child Custody and Support laws' (1992) 39 *Social Problems* 400.

n87 Although see, for example: MWetherell and NEdley, 'Negotiating hegemonic masculinity: Imaginary positions and psycho-discursive practices' (1999) 9 *Feminism and Psychology* 335; RCollier, 'Reflections on the Relationship Between Law and Masculinities: Rethinking the 'Man Question' in Legal Studies' (2003) 56 *Current Legal Problems* 345.

n88 CLewis, APapacosta and JWarin, *Cohabitation, Separation and Fatherhood* (YPS/Joseph Rowntree Foundation, 2002); CSmart and PStephens, *Cohabitation Breakdown* (Family Policy Studies Centre/ Joseph Rowntree Foundation, 2000); BSimpson, PMcarthy and JWalker, *Being There: Fathers After Divorce*, (Relate Centre for Family Studies/University of Newcastle Upon Tyne, 1995).

n89 FKaganas and SDay Sclater, 'Contact Disputes: Narrative Constructions of 'Good Parents'' (2004) 12 (1) *Feminist Legal Studies* 1, at p 15.

n90 *Ibid*, at p 16

n91 *Ibid*.

n92 Tertiary-educated, employed and urban dwelling men have appeared particularly successful in using the media to communicate their views in this area. It has been observed, more generally, that it is often articulate and educated fathers who have sought to 'put up a fight for' their children; men who can afford lawyers.

n93 SDuncan and REdwards, *Lone Mothers, Paid Work and Gendered Moral Rationalities* (Palgrave Macmillan, 1999); SDuncan, ACarling and REdwards (eds), *Analysing Families: Morality and Rationality in Policy and Practice* (Routledge, 2002); REdwards and SDuncan, 'Rational Economic Man or Lone Mothers in Context? The Uptake of Paid Work' in ESilva (ed), *Good Enough Mothering? Feminist Perspectives on Lone Motherhood* (Routledge, 1996).

n94 See further S. Day Sclater, *Divorce: A Psycho-Social Study* (Ashgate, 1999).

n95 A theme noted in recent work concerned with interventions in the field of domestic violence: DGadd, 'Masculinities, violence and defended psycho-social subjects' (2000) 4 *Theoretical Criminology* 429; DGadd, 'Masculinities and violence against female partners' (2002) 11 *Social and Legal Studies* 61.

n96 Compare GFurstenberg, 'Good Dads - Bad Dads: Two Faces of Fatherhood' in AJCherline (ed), *The Changing American Family and Public Policy* (The Urban Institute Press, 1988).

n97 JDewar, 'The Normal Chaos of Family Law' (1998) 61 *Modern Law Review* 467 suggests, for example, that the concerns about justice expressed by fathers' rights groups appear to be shared by many men who have expressed a growing dissatisfaction with the perceived limits of a broad discretionary system in the family law field. See further below.

n98 See, for example: Tarendell, *Fathers and Divorce* (Sage, 1995); Tarendell 'The Social Self as Gendered: A Masculinist Discourse of Divorce' (1992) 15 *Symbolic Interactionism* at p 151.

n99 NWhite, 'About Fathers: Masculinity and the Social Construction of Fatherhood' (1994) 30 *Australian and New Zealand Journal of Sociology* 119.

n100 As Fathers 4 Justice put it: 'We are driven by a sense of duty, responsibility and the need to create change and bring about justice': http://www.fathers-4-justice.org/our_pledge/index.htm.

n101 Bracewell J, reported in *The Guardian*, 22 October 2003; MTaylor and CDyer, 'Caught in the Crossfire' reported in *The Guardian*, 12 July 2005.

n102 This is not to deny the desirability of establishing, or to underestimate the complex problems which can revolve around, maintaining contact: LTrinder, MBeck and JConnolly, *Making Contact: How Parents and Children*

Negotiate and Experience Contact After Divorce (Joseph Rowntree Foundation, 2002): JHawthorne, JJessop, JPryor and MRichards, *Supporting Children Through Family Change: A Review of Interventions and Services for Children of Divorcing and Separating Parents* (Centre for Family Research, University of Cambridge/Joseph Rowntree Foundation, 2003). It is to suggest that post-divorce co-parenting is far from the unproblematic social good it is presented as being within the new father discourse. See further below.

n103 MKing, 'Foreword' in SD Sclater and CPiper (eds), *Undercurrents of Divorce* (Ashgate, 1999).

n104 See further SDay Sclater, *Divorce: A Psycho-Social Study* (Ashgate, 1999); SDay Sclater *The Psychology of Divorce: A Research Report to the ESRC* (University of East London, 1998); SDay Sclater, 'Divorce - Coping Strategies, Conflict and Dispute Resolution' [1998] *Fam Law* 150; SDay Sclater and CYates, 'The Psycho-Politics of Post Divorce Parenting' in ABainham, S Day Sclater and MRichards (eds), *What is a Parent? A Socio-Legal Analysis* (Hart, 1999); JBrown and SDay Sclater, 'Divorce: A Psychodynamic Perspective' in SD Sclater and CPiper (eds), *Undercurrents of Divorce* (Ashgate, 1999).

n105 Ibid.

n106 UBeck and EABeck Gernsheim, *Individualisation* (Sage, 2002); JLewis, *The End of Marriage? Individualism and Intimate Relations* (Edward Elgar, 2001).

n107 See, for example, AJames and AJames, *Constructing Childhood: Theory, Policy and Social Practices* (Palgrave Macmillan, 2004); AProust (ed), *The Future of Childhood* (RoutledgeFalmer, 2004); CJenks, *Childhood* (Routledge, 1996); DWyse, *Childhood Studies* (Blackwell, 2003); WCorsaro, *The Sociology of Childhood* (Sage, 1997); CJenks, 'The Postmodern Child' in JBrannen and MO'Brien (eds), *Children in Families: Research and Policy* (Falmer Press, 1996); JQvortrup, MBardy, GSgritta, and HWintersberger (eds), *Childhood Matters: Social Theory, Practices and Politics* (Avebury Press, 1994); AJames, CJenks and A Prout, *Theorizing Childhood* (Polity, 1998); AJames and AProust, (eds), *Constructing and Reconstructing Childhood* (Falmer Press, 1990).

n108 CfUBeck, *The Risk Society* (Sage, 1992); FFuredi, *Paranoid Parenting* (A Capella, 2002); RCollier, 'Anxious Parenthood, the Vulnerable Child and the 'Good Father': Reflections on the Legal Regulation of the Relationship Between Men and Children' in JBridgeman and DMonk (eds), *Feminist Perspectives on Child Law* (Cavendish, 2001).

n109 CJenks, *Childhood* (Routledge, 1996), at pp20-21.

n110 JLewis, 'The Decline of the Male Breadwinner Model Family' (2001) 8 *Social Politics* 152; KGerson, *No Man's Land: Men's Changing Commitments to Family and Work* (Basic Books, 1993).

n111 On how these issues can shift during the life course see, for example, PRAmato, 'Father-child relations, Mother-child relations and Offspring Psychological Well-Being in Early Adulthood' (1994) 61 *Journal of Marriage and the Family* 557; MELamb, 'Father and Child Development: An Introductory Overview and Guide' in MELamb (ed), *The Role of the Father in Child Development* (John Wiley, 3rd edn, 1997); DJEggebeen and CKnoester, 'Does Fatherhood Matter for Men?' (2001) 63 *Journal of Marriage and the Family* 381.

n112 Although it is important to recognise that such practices are informed by ideals which are mediated by class, race and ethnicity: see further the argument of BFeatherstone, 'Taking Fathers Seriously' (2003) 33 (2) *British Journal of Social Work* at 239; also WHatten, LVinter and RWilliams, *Dads on Dads: Needs and Expectations at Work and Home* (Equal Opportunities Commission, 2002).

n113 As Jenks has put it, 'The trust that was previously anticipated from marriage, partnership, friendship, class solidarity and so on is now invested more generally in the child': CJenks, *Childhood* (Routledge, 1996), at p 19. Contrast AGiddens *Modernity and Self-Identity* (Polity, 1991); UBeck and EBeck Gernsheim, *The Normal Chaos of Love* (Polity, 1995)

n114 See FKaganas and ADiduck, 'Incomplete Citizens: Changing mages of Post-Separation Children' (2004) 67 (6) *Modern Law Review* 959, who suggest a recent 'blending' of paradigms in which the child is increasingly seen as both an autonomous social actor and as a vulnerable object of concern.

n115 AWade, BNeale and C Smart, *The Changing Experience of Childhood: Families and Divorce* (Polity, 2001); CPiper, 'Assumptions About Children's Best Interests' (2000) 22 *Journal of Social Welfare and Family Law*

261; JBKelly, 'Changing Perspectives on Children's Adjustment following divorce' (2003_ 10 *Childhood* 237: cf AMJensen and LMckee (eds), *Childhood and the Changing Family: Between Transformation and Negotiation* (Routledge Falmer, 2002).

n116 CSmart and BNeale, 'It's my life too' – children's perspectives on post-divorce parenting' [2000] *Fam Law* 163; CSmart, 'From children's choices to children's voices' (2002) 40 *Family Court Review* 305; AWade and CSmart, *Facing Family Change: Children's Circumstances, Strategies and Resources* (YPS/Joseph Rowntree Foundation, 2002); J.Dunn, 'Contact and Children's Perspectives on Parental Relationships' in ABainham, BLindley, MRichards and LTrinder (eds), *Children and Their Families* (Hart, 2003).

n117 RBAiley-Harris, GDavid, JBarron and JPearce, *Monitoring Private Law Applications under the Children Act: A Research Report to the Nuffield Foundation* (University of Bristol, 1998).

n118 Ibid.

n119 AGiddens, *The Transformations of Intimacy* (Polity, 1992). See also UBeck. and EBeck Gernsheim, *The Normal Chaos of Love* (Polity, 1995).

n120 Compare, for example, SDSclater and CPiper, 'Re-moralising the family? Family policy, family law and youth' [2000] *CFLQ* 135.

n121 See, for example, HReece, *Divorcing Responsibly* (Hart, 2003), who identifies shifts in political and legal ideas of responsibility as evidence of a broader shifts towards a form of 'post-liberalism' and neo-liberal governance; see also: HHendrick, *Child Welfare, Historical Dimensions, Contemporary Debates* (Policy Press, 2003); WJDoherty, EFKouneski and MFERickson, 'Responsible Fathering: An Overview and Conceptual Framework' (1998) 60 *Journal of Marriage and the Family* 277. In the context of divorce see GMHayes, GBWilson, RAMacDonald and JBGilles, 'Evaluation of an Information Programme for Divorced or Separated Parents' [2003] *CFLQ* 85; RCollier, 'The dashing of a 'liberal dream'?: The Information Meeting, the 'New Family' and the Limits of Law' [1999] *CFLQ* 257. See further, and generally, CPiper, *The Responsible Parent* (Harvester Wheatsheaf, 1993).

n122 See further the argument of SDay Sclater, *Divorce: A Psycho-Social Study* (Ashgate, 1999); S Day Sclater and MRichards (eds), *What is a Parent? A Socio-Legal Analysis* (Hart, 1999).

n123 UBeck and EBeck Gernsheim, *The Normal Chaos of Love* (Polity, 1995); JDewar, 'The Normal Chaos of Family Law' (1998) 61 *Modern Law Review* 467. At stake in present debates around law and fatherhood is, Dewar suggests, more than simply a balancing exercise between questions of individual rights and social utility. Rather, what we are dealing with can be seen to be a number of different and incompatible ways of approaching decision making in the family law field. As Dewar argues, transferring such inescapably political issues about principles, philosophy and the meaning of 'family values' to the field of law and administration makes it unsurprising that the legal arena should then be marked by unresolved (perhaps, unresolvable) tensions. It can be argued, following Dewar's analysis, that some potentially unworkable contradictions run through the conceptualisations of fatherhood within the fathers' rights discourse.

n124 MKing and CPiper, *How the Law Thinks About Children* (Arena, 1995).

n125 FKaganas and SDay Sclater, 'Contact Disputes: Narrative Constructions of 'Good Parents'' (2004) 12 (1) *Feminist Legal Studies* 1

n126 See, for example, CSmart, 'Feminism and Law: Some Problems of Analysis and Strategy' (1986) 14 *International Journal of the Sociology of Law* 109; also JDewar, 'Family Law and Its Discontent' (2000) 14 *International Journal of Law, Policy and Family* 59.

n127 In addition to work cited above n 46 and n 49: SBoyd, 'Custody, Access and Relocation in a Mobile Society: (En)Gendering the Best Interests Principle' in DEChunn and DLacombe (eds), *Law as a Gendering Practice* (Oxford University Press, 2000); SBoyd, 'Can Child Custody law Move Beyond the Politics of Gender?' (2000) 49 *University of New Brunswick Law Journal* 157; SBoyd 'Is there an ideology of motherhood in (post)modern child custody law?' (1996) 5 *Social and Legal Studies* 495; SBoyd, 'From Gender Specificity to Gender Neutrality? Ideologies in Canadian Child Custody Law' in CSmart and SSevenhuijsen (eds), *Child Custody and the Politics of Gender* (Routledge, 1989); SBoyd 'Child Custody, Ideologies and Employment' (1989) 3 (1) *Canadian Journal of*

Women and the Law 111; SSevenhuijsen, 'The Gendered Juridification of Parenthood' (1992) 1 *Social and Legal Studies* 71.

n128 SSevenhuijsen, *Citizenship and the Ethics of Care: Feminist Considerations about Justice, Morality and Politics* (Routledge, 1998); JCTronto, *Moral Boundaries: A Political Argument for an Ethic of Care* (Routledge, 1993); JCTronto, 'Women and caring: what can feminists learn about morality from caring?' in AJaggar and SBordo (eds) *Gender, Body, Knowledge* (Rutgers University Press, 1989).

n129 On the 'zero-sum' conception of power implicit in this kind of argument see RCollier, 'From Women's Emancipation' to 'Sex War'? Beyond the 'Masculinized Discourse' of Divorce' in SD Sclater and CPiper (eds), *Undercurrents of Divorce* (Ashgate, 1999).

n130 HRhoades, 'The 'Non Contact Mother': Reconstructions of Motherhood in the Era of the New Father' (2002a) 16 *International Journal of Law, Policy and the Family* 72, citing ZBauman *Intimations of Postmodernity* (Routledge, 1992).

n131 See, for example, in the context of developments in reproductive technologies, SSheldon, 'Fragmenting Fatherhood: The Regulation of Reproductive Technologies' (2005) 68 (4) *Modern Law Review* 523.

n132 CSmart, 'The Ethic of Justice Fights Back: Family Law and the Rise of the New Paternity', paper presented at the Canadian Law and Society Association Annual Meeting, 'Law's Empire', 26-29 June 2005.

n133 See, for alternative view: SABandes (ed), *The Passions of Law* (New York University Press, 1999); LBently and LFlynn (eds), *Law and the Senses* (Pluto, 1996); MDouglas, 'Emotion and Culture in Theories of Justice' (1993) 22 (4) *Economy and Society* 501; SKarstedt, 'Emotions and Criminal Justice' (2002) 6 (3) *Theoretical Criminology* 299; MNussbaum, *Hiding From Humanity: Disgust, Shame and the Law* (Princeton University Press, 2004).

n134 'For years fathers have been struggling [with]...what we call a bereavement ... a Siberia of the broken': http://www.fathers-4-justice.org/our_pledge/index.htm. At the same time 'our campaign has always had a humorous vein - partly to offset the image of the belligerent dad, the malevolent, violent father that permeates what you read about divorced fathers ... the costume reflects the fact that every father is a superhero to his children, yet, in some cases, the only time the children will see their father is when he's on the telly or in the papers, dressed as Superman': Matt O'Connor, quoted in *The Independent*, 5 February 2004, at p 2). A representation of suicide has played a particularly significant part within the Fathers 4 Justice campaign. For example, in December 2003 a man dressed as Santa Claus tied himself to the gantry above the A40 in London with a rope and put a noose around this neck; he unfurled a banner that read 'Children Need Both Parents This Christmas'. 'Try and arrest me', he was reported as telling police, 'and I'll hang myself'.

n135 RCover, 'Violence and the Word' (1986) 95 *Yale Law Review* 1601.

n136 For example: Wde Haan and ILoader 'On the emotions of crime and punishment and social control' *Theoretical Criminology* 243; KLaister and POMalley, 'Sensitive New-Age Laws: the reassertion of emotionality in law' (1996) 24 *International Journal of the Sociology of Law* 21. ASarat, 'Vengeance, Victims and the Identities of Law' (1997) 6(2) *Social and Legal Studies* 163.

n137 See further work cited above: also BNeale, JFlowerdew and CSmart, 'Drifting Towards Shared Residence?' [2003] *Fam Law* 904; FGibb, 'Fathers winning battle to have custody hearing in public' reported in *The Times*, 10 January 2005.

n138 CSmart, 'The Ethic of Justice Fights Back: Family Law and the Rise of the New Paternity', paper presented at the Canadian Law and Society Association Annual Meeting, 'Law's Empire', 26-29 June 2005. Also CSmart, 'Equal Shares: Rights for fathers or recognition for children?' (2004) 24 (4) *Critical Social Policy* 484.

n139 SDSclater, 'Families Reunited' (2003) *FQ: The Magazine For Modern Dads*, Winter, at pp 56-59.