

**Oregon Law Review**  
Fall 2001 – Volume 80, Number 3  
Cite as: 80 Or. L. Rev. 1035 (2001)

**REVIEW ESSAY: POMO PARENTING©**  
**JUNE CARBONE, FROM PARTNERS TO PARENTS: THE SECOND REVOLUTION IN FAMILY LAW**  
**(2000) AND**  
**NANCY E. DOWD, REDEFINING FATHERHOOD (2000).**

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\* Visiting Professor of Law, Hofstra University School of Law. B.A. Cornell, J.D. NYU, LL.M Columbia. Early ideas about pomo family law were presented at the International Society of Family Law Conference in Albuquerque and early thoughts on commodification were presented at the conference on Commodification Futures: Rethorizing Commodification at the University of Denver. I am grateful to the participants, especially Fran Ansley, Brian Bix, and Martha Ertman, for their helpful comments, to Brian Finlay for first-rate research assistance, to Glenn Reynolds for his endless e-mails, to Sonya Fowler and Wendy Vermillion for their skill in preparing the manuscript, and to the University of Tennessee College of Law for its generous support. The recurring tensions that drive my argument, see *infra* text accompanying notes 6-8, became clear to me during two Feminist Legal Theory workshops at Cornell Law School in April 2000 and May 2001. I am deeply indebted to Martha Fineman for organizing these workshops and for inviting me to participate.

**[\*1035]**

They worry for us. I worry for us. I worry that any minute someone - the police, a child welfare agency, a health inspector, someone - will burst in and arrest me, or maybe just shove me around, make fun of me, call me bad names, and then take Toph away, will bring him somewhere where the house is kept clean, where laundry is done properly and frequently, where the parental figure or figures can cook and do so regularly, where there is no running around the house poking each other with sticks from the backyard. n1

In his quasi-fictional memoir, *A Heartbreaking Work of Staggering Genius*, Dave Eggers explains how he became the single “parent” of his eight-year-old brother when he was twenty-one, following the deaths of their father and mother from cancer [\*1036] within a month of each other. n2 Eggers never expected to be a parent under such circumstances. He never dreamed what it would demand of him or that he would be expected to meet those demands with only his older sister, a preoccupied law student, to help. n3 Eggers does not know how to parent or even what “good parenting” would be under the circumstances. n4 The surrounding culture provides little guidance and less support.

If there ever was a coherent “family,” nested within an extended family, nested within a supporting community, it’s gone now and Eggers knows it. n5 It is this self-consciousness which makes him a postmodern parent; n6 he is all too aware that he is raising a child without the ideological, social or economic supports once believed essential to the task. n7 He is not alone, as June Carbone’s *From Partners to Parents* n8 and Nancy Dowd’s *Redefining Fatherhood* n9 amply demonstrate. As family forms proliferate, the meaning of “parenting” is in flux and an issue of [\*1037] increasingly urgent concern. n10 Both authors respond to this with practical measures to make pomo parenting better for everyone, grounded, paradoxically, in the recognition that everyone’s needs are different and that ‘better’ is a contested term.

Both authors are prominent family law scholars, radical in their visions, but well aware of the realities of family law practice and the politics of family law reform. Carbone describes a paradigm shift in the regulation of the family, from a focus on the partners’ relationship to a focus on their respective relationships with their children. As she puts it, custody has become “ground zero in the gender wars.” n11 After describing the “unfinished revolution” of changing

family norms, n12 she concludes with a nuanced description of the economic restructuring and cultural renegotiations that characterize the transformation of family currently underway.

Dowd hones in on what Carbone calls the “fault line of gender” to describe emerging patterns of fatherhood. Dowd deconstructs fatherhood to expose its multiple dimensions and complexities. She makes a powerful case for reconceptualizing fatherhood in terms of nurturing rather than “genes and dollars”. n13 She then maps the obstacles to this redefinition, and exposes the law’s role in perpetuating them.

My thesis is that both authors are part of a larger project of [\*1038] postmodern family law, n14 in which commentators call for an expansive reconstruction of family law, n15 reflecting what Jean-Francois Lyotard calls “the postmodern condition.” n16 As Janet Wolff observes: “The radical task of postmodernism is to deconstruct apparent truths, to dismantle dominate ideas and cultural forms and to engage in the guerrilla tactics of undermining closed and hegemonic systems of thought.” n17 This Essay explains how both authors undermine hegemonic systems of thought, although in very different ways and with somewhat different objectives, through pomo analyses of pomo parenting.

Part I describes their skepticism toward metanarratives, not only those of the traditional family, but the politically correct metanarratives of the egalitarian family n18 (Carbone) and the single-mother [\*1039] family n19 (Dowd) as well. n20 Part II describes how both authors accept the fragmentation and flux of postmodernism. They recognize that we are embracing increasingly divergent norms, rather than moving toward some new consensus regarding parenting. n21 Part III explains how they grapple with the commodification of parenting, insisting that the economic value of nurturing work be acknowledged and compensated. Both authors urge a more child-centered agenda n22 and both realize that this is in tension with neoliberal as well as conservative priorities, even as it resonates with the rhetoric of both. Children, like the environment, are a long-term investment and no one wants to pay for them. Both authors aim to change this and, like Eggers, they undertake a daunting task with energy and style.

Like Eggers, both authors show why pomo parenting is “heartbreaking work.” n23 Reading them in tandem gives added poignancy to the term, however, because Carbone’s desperate mother [\*1040] may well be the victim of Dowd’s equally desperate father, and vice versa. The descriptive phrase “of staggering genius” becomes ironic here (as it is for Eggers) n24 because pomo parenting is more about daily drudgery n25 than “Eureka!” moments.

Reading *Redefining Fatherhood* and *From Partners to Parents* in tandem suggests a more literal meaning of “staggering genius.” Jane Smiley defines “genius” as “a person who understands the few simple elements of any process that will propel it forward where always before it has been fatally retarded.” n26 Carbone’s genius lies in her ability to synthesize vast, disparate, and politically volatile materials into concise, lucid, non-inflammatory prose. Dowd’s genius, in contrast, lies in her capacity for relentless deconstruction, her ability to identify the ways in which ostensibly neutral institutions perpetrate subordination. n27 They repeatedly subvert each other’s arguments, accordingly, although they share many objectives. n28 Read in tandem, they become “staggering geniuses,” reeling from one knock-out punch [\*1041] after another. n29 In the process, Dowd and Carbone demonstrate the range and vitality of pomo critique, and the need for such critiques to describe and address the dilemmas of pomo parenting.

## I

### Incredulity Toward Metanarratives

As Jean-Francois Lyotard explains, postmodernism is simply “incredulity toward metanarrative.” n30 For Eggers, the metanarrative of the traditional family was as much a lie growing up as it is now. His father, a respected lawyer, was a secret drunk who spent his evenings watching television and sipping ‘quinine water’ generously diluted with gin, terrorizing his children with violent outbursts. n31 Eggers’s fiercely protective mother effectively abandoned her children, albeit unwillingly, through her long, incapacitating illness. n32 The Eggers children, not surprisingly, have become cynics. n33

Like Eggers, Carbone and Dowd are incredulous toward the metanarrative of the traditional family. n34 Both realize that there is no big picture, only endlessly changing pictures on a small [\*1042] screen. n35 There is no single, comprehensive norm of parenting; rather, there are multiple, proliferating, conflicting as well as overlapping norms. n36 The “traditional” family has not dominated the social landscape for some time n37 - if indeed it ever [\*1043] did- n38 and neither author mourns its passing.

They not only reject the metanarrative of the traditional family in particular, but the possibility of any new metanarrative in this context. n39 Carbone shows why by playing a wide range of analysts off against each other. Each ‘grand theory’ incorporates a particular world view, reflecting a necessarily partial view of reality as well as a strategic

agenda. Economist Gary Becker, for example, explains that the wife in traditional marriage assumed unremunerated nurturing work, especially childcare, n40 in exchange for long-term economic security. This was undermined by no-fault divorce, n41 however, which meant that men could leave the relationship before satisfying their part of the bargain. n42

But Becker cannot explain why more women than men have taken advantage of no-fault laws to leave their marriages. n43 As Carbone observes, he does not appreciate “just how bad a deal [\*1044] traditional marriage has been for women.” n44 Carbone draws on political theorist Susan Moller Okin to show that the demise of traditional marriage must be understood in a larger social and economic context, in which financial independence is for the first time a real option for most women. n45

But if Okin is right, Carbone asks, why hasn't marriage simply been renegotiated? Since women earn more, n46 why don't men nurture more? Okin's metanarrative of the egalitarian family is belied by empirical data showing that women still spend substantially more time taking care of children. n47 The metanarrative of equal, rational partners negotiating domestic arrangements fails to capture a messier, more complicated, reality. n48 Carbone turns to economist Victor Fuchs, who proposes that women spend more time taking care of children because they care more about children. n49

This is precisely the proposition that Dowd interrogates. Some fathers care a great deal, she insists, as shown by a small but growing cadre of fathers intensely involved in their children's lives n50 and an emerging fathers' rights movement. n51 At the same [\*1045] time, she challenges the conventional wisdom that “more contact [with fathers] is important,” n52 noting that the empirical data to support this “are thin or nonexistent. Visitation or the lack of it does not make a difference to the child's future; child support does.” n53 Dowd rejects the possibility of metanarratives by “questioning everything.” n54 She is always open to new possibilities, however, such as the yet-to-be discovered benefits of gay fathers' parenting. n55

Just as feminists deconstructed the ways in which women have been excluded from the work force, or their participation marginalized, n56 Dowd deconstructs the ways in which men have [\*1046] been excluded or marginalized in connection with nurturing work. n57 As she shows, fathers' parenting is rarely supported. n58 Rather, nurturing men are marginalized and discriminated against, and sometimes invisible. n59 The metanarrative of the traditional family constrains men, often at great personal cost, n60 just as it constrains women.

In addition, by showing how men are victimized by workplace hostility to parents and welfare policies that exclude them, Dowd identifies an important new ally in the struggle for support of nurturing work in general. Such support is crucial to women's workplace participation and children's well-being. n61 Dowd is not [\*1047] the only feminist to realize the importance of men to this project, nor the first. n62 Naomi Cahn and Joan Williams, among others, n63 argue that the gendered division of labor cannot be altered simply by changing women's roles. n64 But few venture so bravely into the often hostile territory of fathers' rights, n65 or so far into the dense thickets of social science. n66

Carbone explores different territory with similarly rewarding results. Starting with Friedrich Engels, she crystalize the works of the leading historians of the family. n67 Their stories, she observes, [\*1048] focus on the relatively privileged. In the United States, for example, the story of the family has historically excluded the stories of black families. n68 In a brilliant chapter summarizing the latest literature on family and race, n69 she shows how parenting has always been 'raced' and the costs to us all. Analyses grounded in the unspoken assumption that “parents” are in fact white and middle-class are not only irrelevant to many Americans, but lead to policies that are useless or worse. n70

Dowd once again ratchets the discussion to another level. She draws on the full arsenal of identity politics n71 to show that “race” conflates diverse cultures n72 and that analyses have been classed n73 [\*1049] as well. The complex reality is obfuscated by metanarratives which inevitably erase certain stories. n74

Both authors are interested in recovering those stories and showing how families can thrive in many different forms. n75 Carbone does so with lively anecdotes n76 and by drawing on television sitcoms. n77 The populations which are Dowd's focus have not yet made prime time. n78 She takes a different approach, accordingly, relying on empirical studies by a veritable army of social scientists. n79 Trained as a social scientist, Dowd ably translates arcane data into accessible prose. Even as she supports her arguments, however, she criticizes much of the literature on minority families [\*1050] as biased. n80

The authors' skepticism toward metanarratives precludes modernist plans for specific reforms, but it does not preclude clear visions of a better future n81 (although both are well aware that what is “better” for some may be worse for others). n82 Postmodern analysis, they show, need not lead to the “black hole of relativist postmodernism.” n83 But

their visions are “explicitly tentative, relational, and unstable,” n84 subject to ongoing critical assessment, based on ongoing experience and critical reflection informed by that experience. n85 Like Eggers, Dowd does not want “the police, a child welfare agency, a health inspector, someone” n86 taking children away from those who love and care for them. n87 While she wants more support for parents, including [\*1051] private as well as state support, n88 she prefers to leave specifics open, relying more on pomo rhetoric than modern, legalistic formulas. n89 As she explains, Our ultimate progress will be measured ... in our ability to envision and implement a different construction of fatherhood for this generation. Our success will be measured not in the statistics and reports of the government, but in the common perception of preschoolers about daddies, who they are and what they do. n90

Like Dowd, Carbone is talking about a revolution. But she does not want to replace one form of authority over parents with another. She wants the law to focus on providing more support for parents, economically as well as socially, but she doubts that the kind of revolution she envisions can be foisted upon parents, or anyone else. As she concludes, Society’s ability to influence family behavior is almost as much an issue as the content of family values... . Even with respect to issues about which there may be broad consensus - for example, that two parents are better than one - the ability to produce anything close to universal conduct is very much in doubt. n91

Like Dowd, she seeks a change of heart, an expansion of our shared perceptions of “parenting.” n92

[\*1052]

## II

### Things Fall Apart

As geographer David Harvey observes:

The most startling fact about postmodernism[ ] [is] its total acceptance of the ephemerality, fragmentation, discontinuity, and the chaotic ... . But postmodernism responds to [that] fact ... in a very particular way. It does not try to transcend it, counteract it, or even to define the “eternal and immutable” elements that might lie within it. Postmodernism, swims, even wallows, in the fragmentary and the chaotic currents of change as if that is all there is. n93

After the deaths of his parents, Eggers cuts all ties with the Chicago suburb where he lived all his life and heads for a series of rentals in California. Even as he wallows in “chaotic currents of change”, however, he and his sister try to coordinate their hectic lives n94 and provide Toph with a wholesome, stable home. But it is a losing battle:

We scrape through every day blindly, always getting stumped on something that we should know - how to plunge a toilet, how to boil corn, his Social Security number, the date of our father’s birthday - such that every day that he gets to school, that I get to work and back in time for dinner, each day that we cook and eat before nine and he goes to bed before eleven and doesn’t have blue malnourished-looking rings around his eyes like he did for all those months last year - we never figured out why - feels like we’ve pulled off some fantastic trick - an escape from the jaws of death, the hiding of the Statue of Liberty. n95

As Carbone and Dowd understand, pomo parenting is about ephemeral custody arrangements, n96 fragmented families, n97 and [\*1053] discontinuous, even chaotic, schedules. Both “wallow” in “the fragmentary and the chaotic currents of change as if that is all there is,” n98 always insisting, however, that children be cared for even as chaos eddies around them. Indeed, it is in these very currents of change that each author finds her vision for a more child-focused society.

Dowd’s approach to fatherhood illustrates her acceptance of fragmentation and flux. Existing legal categories are inadequate, she argues: biological connection, marriage, or adoption may or may not be sufficient, n99 but none of them are necessary. n100 Rather than propose a new standard, however, she notes that “diversity is a critical value as we rethink fatherhood” n101 and identifies proliferating models of fatherhood from which to draw. She breaks these down into two basic models, a small but growing cohort of “significantly involved” fathers n102 and a much [\*1054] larger group of uninvolved fathers. n103 In addition, she describes “serial parenting”; that is, men who act as fathers for the children of the women with whom they live. n104

Noting that “the strongest of these patterns are social, connected to relationships and households,” n105 Dowd urges a redefinition of fatherhood as “social fatherhood,” n106 which she argues “best responds to the need for

flexibility, given the context of significant family fluidity and change.” n107 Dowd identifies five distinct categories of “social fathering” n108 and three overlapping subgroups - divorced, n109 gay, n110 and black fathers n111 - within each. She welcomes this complexity, arguing that “we should [\*1055] work with existing patterns of fatherhood” rather than resisting them. n112 It is in these patterns that she finds her models: “Assumptions of deviance abound in much of the older literature on [divorced, black, and gay fathers]. More recent research tells rich stories of accomplishment and pluralistic approaches to fathering, suggesting positive models from these subgroups of fathers.” n113 Dowd concludes that “there are no easy answers, and keeping the answers multiple and flexible may be better than a simple unitary standard or definition. The data on which we act are provisional and tentative, which may argue for caution.” n114

Carbone, similarly, welcomes proliferating family forms, deftly synthesizing the work of William Galston, Okin, Fineman, and Becker, “four theorists [who] recognize that contemporary families challenge conventional notions of family form, and reconceive the alternatives.” n115 The theorists refigure adult relationships, and show how children can be cared for within the modified adult frameworks. Carbone once again draws on a well-known figure from popular culture, n116 Murphy Brown, n117 to challenge their carefully constructed theories: “Murphy Brown destabilizes the categories ... suggesting that these efforts are futile, that the altered boundaries between home and market will [\*1056] produce too varied a set of adult relationships to provide for everyone, and that the norms governing adult relationships will not necessarily take children’s interests into account.” n118

Carbone concludes with concrete suggestions for better assuring that children’s needs are met, given these destabilized categories and ever-proliferating alternatives. To address the insecurity of mothers confronting a “mindless emphasis on joint custody,” n119 as well as the disincentives for fathers in a “winner-take-all custody system,” n120 for example, she urges greater clarity for custody awards. n121 A standard that “starts with a presumption of both parents’ continuing involvement but also recognizes clear grounds for disqualification” n122 is better for everyone, she [\*1057] suggests. While Carbone wants more support from the state and the community, similarly, she again stresses the need for a nuanced, multipronged approach. She notes, for example, that the needs of families with small children are very different from the needs of families with teenagers. n123 While her proposals are concrete, accordingly, they are also flexible, reflecting and accommodating the fragmentation and flux of pomo parenting.

### III

#### The Commodification of Parenting

##### A. Too Much is Not Enough

As Fredric Jameson has observed, “postmodernism is the cultural logic of late capitalism.” n124 A key feature of this ‘cultural logic’ is commodification, or the transformation of something which is not commonly sold, traded or otherwise alienated - such as water or love - into something that is - bottled water or mail-order brides. n125 As Joan Williams, Adrienne Davis, and Martha Ertman recently noted in convening a conference on the subject, “Some fear that commodification assaults dignity and harms people, in part by crowding out other ways of thinking and talking. Others suspect that refusing to commodify amounts to one more way of keeping cash away from subordinated people.” n126 Dowd [\*1058] and Carbone show how the commodification of parenting has in fact “crowded out other ways of thinking.” n127 At the same time, the refusal to commodify parenting “amounts to one more way of keeping cash away from subordinated people.” n128 There is, in short, both too much commodification and not enough.

Children may be “priceless,” n129 but they are also quite expensive. Dowd and Carbone show how this is ignored in both family law and welfare law, and the resultant costs to society at large. The costs of parenting not only include dollars spent for groceries and fast food, pediatricians and orthodontists, school lunches and fees, but time spent dressing, feeding, cleaning up after and driving children to their schools, appointments, and soccer games. n130 These costs are difficult to calculate within the black box of the intact marriage, n131 although the dollars are generally linked to male breadwinners and time to female breadmakers. n132 Where there is no intact family, either because of divorce or because the [\*1059] parents never married, n133 these costs are rarely met. The loss to society at large, in terms of neglected, abused, underachieving, or delinquent children, n134 and stressed, overworked, debt-burdened parents, is clearly enormous, n135 although probably incalculable. n136

##### B. Child Support

While everyone agrees that parents should support their children, the amount and source n137 of such support has been subject to wide-ranging debate. n138 After years of studies, discussions and debate, n139 Congress required the states to promulgate child support [\*1060] guidelines n140 in the Personal Responsibility and Work Opportunity

Reconciliation Act of 1996 (PRWORA). n141 As both authors note, the resultant guidelines severely underestimate the actual costs of raising children, to the detriment of children and their custodial parents. n142 The persistence of low child support guidelines is overdetermined; that is, it is attributable to redundant factors and is thus likely to persist even if some of these factor are addressed. Non-custodial parents, for example, are generally unwilling to indirectly subsidize the custodial parent through generous child support payments. n143 In addition, as Dowd points out, child support was never intended to secure adequate support. n144 Rather, it was designed only as a partial contribution. n145 Even if these factors were addressed, however, child support guidelines would probably remain low because nurturing work is undervalued. This is grounded, in part, in the expectation that parents will nurture for “love,” rather than for money, as mothers usually have. n146

**[\*1061]** Notwithstanding low guidelines, which impose a relatively minor burden on most non-custodial parents, collection rates remain low, especially in non-marital cases. As Carbone explains:

Many ... mothers never seek support in the first place. Their reasons are varied. They include the father’s poverty, his disappearance, fear of his reaction, and the desire to exclude him from a further role in the child’s life. They may also include a mother’s sense that it is unfair to seek support from the father if he had no role in the decision to forgo contraception, or the one not to seek an abortion. n147

Many fathers have a similar perspective. According to Dowd, “fathers back away from the breadwinner role after divorce or if they never marry... . Fathers see any decline in payment of child support as justified by the decline in contact with their children.” n148 In short, even if child support is paid, it is usually inadequate. n149 Fathers are reluctant to pay even low child support, and sometimes mothers are reluctant to seek it, because fathers aren’t getting what they pay for and mothers don’t want them to. Society (that is, the rest of us) views this as a private matter, as long as the mother and children do not qualify for welfare. n150

### C. Welfare

The gap between children’s needs and the resources to meet those needs is even sharper in the context of welfare, n151 where **[\*1062]** virtually all recipients are women. n152 As Carbone vividly shows in her contrasting stories of unwed mothers, one black and one white, the black woman “receives [support] from the African-American community ... strengthened by the hostility they know [she] will receive from whites and the conviction that adoption is not a viable option for black babies.” n153 The point of welfare is not to support such mothers, but to perpetuate values about family structure that are irrelevant to them. n154

Dowd is even more emphatic, arguing that we fail to make welfare benefits sufficient to support children because we are afraid that doing so will encourage irresponsible reproduction. n155 She rejects this as part of a profoundly gendered ideology, which persists in casting men as breadwinners and women as nurturers. She argues that the scope of these gendered constructs can only be appreciated by looking at the broader, worker-oriented structure of tax and social security benefits. These laws combine with welfare laws and child support laws to perpetuate the same gendered division of labor described by Becker and criticized by Okin. n156 This division of labor is a major obstacle to Dowd’s “social fathers” and she proposes specific measures to counter it, including “universal, non-needs-based subsidies, tax benefits to individuals and businesses, paying salaries and benefits to nurturers, **[\*1063]** or supporting credits ... for nurturing work, akin to the valuing of military service through the range of veterans benefits and preferences.” n157 For Dowd, nurturing work is as critical to our collective well-being as defense. n158

### Conclusion

Children are a long-term, collective investment. n159 These books contribute significantly to the rhetoric necessary to make this investment a political priority. Whether such rhetoric will suffice, of course, is an open question. As Carbone points out, pro-family rhetoric has historically imposed most of the costs on women. n160 While she seems reluctant to perpetuate this imposition, conservative support may well be crucial in implementing a pro-child agenda. At the same time, the pro-family movement risks paralysis if it tries to be all things to all factions. Dowd, similarly, makes a convincing argument that men would benefit from the kind of social supports that Western Europe has long taken for granted. n161 Her vision of a strong social safety net has always been a hard sell in America, however. n162 It’s no easier **[\*1064]** now, as Western Europe retreats from expensive social welfare programs and the United States congratulates itself on the “end of welfare as we know it.” n163

At the same time, as both authors demonstrate, they are hardly fighting against an irresistible tide. Rather, they are riding currents which already support some of their proposals. The parents whose stories fill these books, such as

Dowd's "serial fathers" and those at "ground zero in the gender wars" n164 in Carbone's account, suggest major, still untapped support for the child-centered visions of these authors. n165 Reading these books in tandem provides a sense of the dynamic of change, the synergy between Dowd's relentless deconstruction and Carbone's equally indomitable synthesis, through which such visions may be realized.

In *A Heartbreaking Work of Staggering Genius*, n166 the brothers achieve a similar synergy when they play frisbee. n167 They become, however briefly, ordinary American boys on a beach, an everyday miracle:

There is nowhere I stop and you begin ... when Toph catches his, he flexes with a fury, his muscles just these taut strings, his mouth open, teeth straight and pushing so hard against each other. And when I catch I do it, too, I flex and yell and vibrate - Can you see this? Goddamn, look at that fucking [\*1065] throw did you see Toph throw that goddamn thing, the trajectory on that fucking thing? It's going way past me but I can run under it, I am barefoot and run like an Indian and I can look back and it's still coming, I can see Toph in the distance, blond and perfect ... and I am there as [the frisbee] drifts down and into my hands, my hands spread out, thumbs as wings, because I am there, ready to cradle it as it spins just for a second until it stops. I am there. I was there. Don't you know that I am connected to you? n168

Dowd and Carbone do know that they are connected to struggling pomo parents like Eggers, as well as to the child he is trying to raise. n169 Both would respect the brothers' privacy, the intimate space of the family that they inhabit even on a public beach. But both would willingly join in the game (if Eggers let them), because they also know that the terrible responsibility of raising Toph should not be his alone. n170

#### FOOTNOTES:

n1. Dave Eggers, *A Heartbreaking Work of Staggering Genius* 82 (2001).

n2. Eggers cites *The Importance of Being Earnest*: "To have lost one parent, Mr. Worthing, might be considered a misfortune. To have lost both smacks of carelessness." Eggers, *supra* note 1, at "A) The Unspoken Magic of Parental Disappearance."

n3. Cf. June Carbone, *From Partners to Parents: The Second Revolution in Family Law* 239 (2000) ("For many of my generation who thought we knew what to expect from relationships, parenthood - with its demands, external expectations, gender divisions, and emotional intensity - took us by surprise.").

n4. See *infra* note 168 (citing Dowd on men's frequent need for parent education).

n5. See Stephenie Coontz, *The Way We Never Were: American Families and the Nostalgia Trap* (1992). While diversity may not be new, it has not always been recognized. What is "new" is our self-consciousness. See, e.g., Nathan Glazer, *We Are All Multiculturalists Now* 13-14 (1997).

n6. As explained below, this self-consciousness has multiple manifestations, including skepticism toward the metanarrative of the family, see *infra* text accompanying notes 30-32, acceptance of fragmentation and flux, see *infra* accompanying notes 93-95, and recognition of the commodification of parenting, see *infra* note 130.

n7. Indeed, one of Eggers's major themes is that schools, employers, and landlords are as unprepared to deal with his parenting role as he is. The larger social, economic and legal structures in which they all function, moreover, are obviously arranged for someone else. Cf. Barbara Stark, *Marriage Proposals: From One-Size-Fits-All to Postmodern Marriage Law*, 89 Cal. L. Rev. 1479, 1482 (2001) [hereinafter Stark, *Postmodern Marriage Law*] (explaining how many, paradoxically, feel like members of a slighted minority, excluded by norms which benefit others.). Thus, for example, married women who stay home with young children complain about their characterization as 'soccer moms' even as commentators ask why the work of black single mothers is not considered work at all. See *id.*; see also Nancy E. Dowd, *Redefining Fatherhood* 135 (2000) (concluding that "those affected most by the family law structure experience it as strongly gender-biased [against them]").

n8. Carbone, *supra* note 3.

n9. Dowd, *supra* note 7.

n10. To “father” a child usually refers to a one-time procreative event, while to “mother” a child usually refers to a more labor-intensive nurturing relationship. See Naomi Cahn, *The Power of Caretaking*, 12 *Yale J.L. & Feminism* 177, 183 (2000) (“When we think of ideal parenting, we typically envision ‘mothering,’ rather than ‘fathering.’”). Some feminists question the term “parenting.” “[Martha Fineman] reserves greatest disdain for liberal feminists, who would, in the name of the egalitarian family, equate mothering with fathering, and substitute the term ‘parenting’ for both activities. Fineman describes this conflation as the ‘neutering’ of the mother, erasing her ... from view.” Carbone, *supra* note 3, at 23. Both authors recognize that for a variety of social, cultural, economic and political reasons, women and men usually parent very differently. Dowd, *supra* note 7, at 229; Carbone, *supra* note 3, at 116 (“That gender differences exist, and that men and women ‘parent’ somewhat differently is not in dispute. That these differences make the presence of a mother and a father ... indispensable to children’s well-being is another matter.”). For a description of the ways in which these differences become internalized, and how such internalized psychological constructs in turn shape external social, political and cultural factors, see Barbara Stark, *Divorce Law, Feminism and Psychoanalysis: In Dreams Begin Responsibilities*, 38 *UCLA L. Rev.* 1483 (1991).

n11. Carbone, *supra* note 3, at 180.

n12. *Id.* at 227.

n13. Dowd, *supra* note 7, at 157-80.

n14. This is not an exclusive affiliation; both may be part of other projects as well. Brian Bix notes Carbone’s significant contribution to law and economics, for example. See, e.g., Brian Bix, *How to Plot Love on an Indifference Curve*, 99 *Mich. L. Rev.* 1439, 1452 (2001) (book review). At the same time, however, Bix notes the multiple methods employed by Carbone, *id.* at 1447-54, and her resistance to closure, see *infra* note 91, which contribute to what I view as the postmodern character of her analysis.

n15. I have explained how this plays out in the context of marriage law. Stark, *Postmodern Marriage Law*, *supra* note 7; see generally Judith Stacey, *In The Name of The Family: Rethinking Family Values in the Postmodern Age* (1996); Nancy E. Dowd, *In Defense of Single-Parent Families* (1997); Katharine T. Bartlett, *Re-Expressing Parenthood*, 98 *Yale L.J.* 293 (1988); Naomi R. Cahn, *The Moral Complexities of Family Law*, 50 *Stan. L. Rev.* 225, 234 (1997) (book review summarizing Dowd’s first book, *In Defense of Single-Parent Families* (1997)). For a thoughtful analysis of “postmodern personal life”, see Milton C. Regan, Jr., *Family Law and the Pursuit of Intimacy* 68-88 (1993). Regan’s description of “fractional relationships,” built around a “limited aspect of one’s being,” resonates powerfully in the instant context. *Id.* at 86 (citation omitted). Indeed, his first example is a parent spending “quality time” with a child. *Id.* For an explanation of Edward Shorter’s use of the term “postmodern family” in 1975, see Stacey, *supra*, at 7. See generally *Lawyers in a Postmodern World: Translation and Transgression* (Maureen Cain & Christine B. Harrington eds., 1994).

n16. Jean-Francois Lyotard, *The Postmodern Condition: A Report on Knowledge* (Geoff Bennington & Brian Massumi trans., Univ. of Minn. Press 1984). Carbone’s thesis, that “if family obligation ... is to be rebuilt at all in a way that links individual obligation to societal needs - then parenthood may be the only remaining candidate,” Carbone, *supra* note 3, at 129, is predicated on her description of the “post-modern family type” she describes in *id.* at 127. See Maxine Eichner, *On Postmodern Feminist Legal Theory*, 36 *Harv. C.R.-C.L. L. Rev.* 1, 70 n.275 (2001) (citing Dowd’s work on single-parent families as conducive to the “agenda” of postmodern feminists).

n17. Janet Wolff, *Postmodern Theory and Feminist Art Practice*, in *Post-modernism and Society* 187, 190 (Roy Boyne & Ali Rattansi eds., 1990).

n18. Carbone draws on Susan Moller Okin, *Justice, Gender, and the Family* (1989) to depict the egalitarian family. Carbone, *supra* note 3, at 16-19. Carbone, like Dowd, has nothing against the egalitarian family but insists on making its assumptions explicit. See, e.g., Carbone, *supra* note 3, at 28-29 (noting that Okin’s egalitarian family assumes two-income households and a negligible role for the state).

n19. Martha Fineman has called this the “mother-child dyad.” Martha Albertson Fineman, *The Neutered Mother, The Sexual Family, and Other Twentieth Century Tragedies* 230 (1995). This is not to suggest that Dowd disparages the single-mother family, which was the focus of her first book, *In Defense of Single-Parent Families*. See *supra* note 15. Rather, she rejects it as the sole alternative to the nuclear family.

n20. Pomo parenting, like postmodernism in general, encourages strange bedfellows. See Elizabeth Bartholet, *Nobody’s Children: Abuse and Neglect, Foster Drift, and the Adoption Alternative* 7 (1999) (explaining how



“individuals and groups from all parts of the political spectrum have come together ... questioning the supremacy of family preservation policies”); Stephanie B. Goldberg, *Make Room for Daddy*, 83 A.B.A. J. 48, 49 (1997) (cover story) (“By joining forces with second wives, grandparents and noncustodial mothers, and toning down some of its rhetorical excess, a large chunk of the [fathers’ rights] movement has become more mainstream.”).

n21. While Carbone suggests that parenting is the new paradigm, Carbone, *supra* note 3, *passim*, her definition of “parenting” is broad, inclusive, and flexible. See, e.g., *infra* text accompanying notes 115-23.

n22. Naomi Cahn calls this the “new morality:”

The new morality also sees responsibility for children as a more general societal commitment in which caretaking is appropriately valued and gender equality is assured. In this context of commitment to children, responsible parenthood does not only depend on the presence of a second parent, but also on greater public support, reformed workplaces that accommodate men’s and women’s caretaking needs, and better support for child care.

Cahn, *supra* note 15, at 240.

n23. As a single father of two teenagers confesses, “Behind that display of decisive competence that you show the world, sometimes there’s a lonely man who’s hurting. Behind that confident exterior, sometimes there is someone who’s sailing alone in uncharted waters without a map or a compass.” Carey Goldberg, *Single Dads Wage Revolution One Bedtime Story at a Time*, N.Y. Times, June 17, 2001, at 1, 14.

n24. “Which is to say nothing of the faux (real? No, you beg, please no) boastfulness of the whole title put together.” Eggers, *supra* note 1, at “pretend it’s fiction.” There is a further irony here, of course, in the notion of a young, single parent as somehow extraordinary. In fact, there are millions of such parents, most of whom are female and black or hispanic. Whether Eggers’s tragedy would distinguish him in this group is an open question.

n25. Anna Quindlen, *Playing God on No Sleep*, Newsweek, July 2, 2001, at 64 (concluding a compassionate commentary on Andrea Yates, “who apparently spent a recent morning drowning her five children in the bathtub” and noting that “just because you love people doesn’t mean that taking care of them day in and day out isn’t often hard, and sometimes even horrible”).

n26. Jane Smiley, *Horse Heaven* 383 (2000).

n27. This theme has been explored in a burgeoning literature focusing on race and gender. Some prominent examples include: Stephanie Wildman, *Privilege Revealed: How Invisible Preference Undermines America* (1996); Ian F. Haney Lopez, *White By Law: The Legal Construction of Race* (1996); and Barbara J. Flagg, “Was Blind, But Now I See”: White Race Consciousness and the Requirement of Discriminatory Intent, 91 Mich. L. Rev. 953 (1993). Dowd’s contribution is to show how this analysis applies to men in the context of parenting, without ignoring their still-privileged status in other contexts. See, e.g., Harlon Dalton, *The Clouded Prism: Minority Critique of the Critical Legal Studies Movement*, in *Critical Race Theory: The Key Writings That Formed the Movement* 80, 83 n.10 (Kimberle Crenshaw et al. eds., 1995) (describing his reaction to white males who said they had felt silenced by his remarks). “I was instantly reminded of my own response, at age seven or so, to a playmate whose mother had recently died. ‘I know how you feel,’ I said knowingly. ‘We just buried my favorite turtle after it softened to death.’” *Id.*

n28. See, e.g., *infra* note 53 (noting benefits of “enhanced paternal involvement” while Dowd breaks such involvement down into “contact” and “support”).

n29. The image is from *Girlfight* (Screen Gems 2001), in which a feisty young woman breaks down another gender barrier. See Rita Kempley, *Girlfight: Think Rocky with a Feminist Hook*, Wash. Post, Sept. 29, 2000, at C01 (“Boxing has always been a great social leveler for minorities - the Irish, blacks, Hispanics - so why not women?”). The allusion is apt here because both authors are fighters, champions for those children and parents neglected by the law, although not always on the same side. In addition, as another reviewer noted about the star, “she doesn’t so much transcend gender as redefine it.” A.O. Scott, *Floating Like a Butterfly, Stinging Like a Bee*, N.Y. Times, Sept. 29, 2000, at E22. Both authors similarly redefine gender.

n30. Lyotard, *supra* note 16, at xxiv. This “incredulity” resonates with feminist critiques of “grand theory.” See, e.g., Carbone, *supra* note 3, at 4 (describing Gary Becker’s “attempt to explain the family in terms of ‘grand [economic] theory’”); see also Martha L.A. Fineman, *Feminist Legal Scholarship and Women’s Gendered Lives*, in *Lawyers in a*

Postmodern World, *supra* note 15, at 229, 233 (urging feminists to “challenge and compete with the existing totalizing nature of grand legal theory”).

n31. See, e.g., Eggers, *supra* note 1, at 232-33 (describing a night when his father broke down his bedroom door).

n32. See, e.g., Eggers, *supra* note 1, at 1-45.

n33. “At Christmas, as with all holidays we still bother with, we celebrate it in a way that’s at once an homage to our parents and their way of going about things, but more often a vicious sort of parody.” Eggers, *supra* note 1, at 302.

n34. As Carbone notes, “The dismantling of marriage as the exclusive determinant of family connections, is complete and well documented in every discipline that has undertaken the task.” Carbone, *supra* note 3, at 227. Carbone earlier cites Mary Ann Glendon for the proposition that “the traditionally central position of legal marriage in family has been extensively eroded everywhere.” *Id.* at 142.

n35. The evocation of television resonates with Carbone’s use of television characters as archetypes. Postmodernism is on familiar, if not familial, terms with popular culture. See, e.g., The Family Test Tube, *Newsweek*, May 28, 2001, at 50 (“Television has always been ahead of the curve when it comes to depicting unconventional households.”). Some high points include: Julia (1968), The Courtship of Eddie’s Father (1969), Partridge Family (1970), and Once and Again (1999). See *id.*; see also Elizabeth Wilson, These New Components of the Spectacle: Fashion and Postmodernism, in *Postmodernism and Society* 209 (Roy Boyne & Ali Rattansi eds., 1990); cf. James Herbie DiFonzo, Customized Marriage, 75 *Ind. L.J.* 875, 882 (2000) (attributing “the large proportion of references in [his] Article to popular journals and to sources on the internet” to “Karl Llewellyn’s dictum that ‘divorce is the major area of interaction between the social institution and the legal’”). Not only divorce, but family law more broadly, is usefully viewed as such a “major area of interaction,” and for this reason particularly susceptible to pomo influence and appropriation. As Carbone notes, the question of an unmarried father’s parental role was addressed by the Supreme Court in a “trio of cases [in the 1980s] (although it would not be until the 1990s that the issue became the popular subject of tabloids and made-for-TV movies).” Carbone, *supra* note 3, at 166. But see Pierre Schlag, Foreword: Postmodernism and Law, 62 *U. Colo. L. Rev.* 439, 444 (1991) (explaining how all law is already postmodern). See also J.M. Balkin, What is a Postmodern Constitutionalism?, 90 *Mich. L. Rev.* 1966, 1973 (1992) (asserting that “jurisprudence produced during the postmodern era will turn out to display elements of postmodernity whether this is consciously desired or not”).

n36. Karen Springen & Pat Wingert, Is It Healthy for the Kids? *Newsweek*, May 28, 2001, at 54 (“Until recently, the dysfunctionality of nontraditional families was a self-fulfilling assumption; children without a biological mother and father were stigmatized and shunned. Now, in all but the most conservative milieus, that is no longer true.”). Compare Melissa Fay Greene, The Family Mobile, *N.Y. Times*, Aug. 19, 2001, at 32 (describing “large families,” or families with more than six children, focusing on families with seventeen and eighteen children, including adopted and often physically handicapped children), with Lisa Belkin, Your Kids Are Their Problem, *N.Y. Times Mag.*, July 23, 2000, at 30 (describing emergence of a new “child free” movement), and Patricia Lunneborg, *The Chosen Lives of Childfree Men* (1999) (describing men’s experience of childlessness and noting how it differs from women’s).

n37. Nicholas Kulish, Census 2000: The New Demographics, *Wall. St. J.*, May 15, 2001, at B1. The 2000 census confirmed that “fewer than 24% of homes were composed of husband, wife and children under age 18.” If the traditional family is limited to stay-at-home mothers and sole breadwinner fathers, this falls to fewer than ten percent. Dowd, *supra* note 7, at 2. But see Janny Scott, A Nation by the Numbers, Smudged, *N.Y. Times*, July 1, 2001, at 20 (“The farther the numbers migrate from the bureau’s offices, the less anyone lets on that the census is no more than what one former bureau director calls it: an estimate of the truth.”). See generally Theodore M. Porter, *Trust in Numbers: The Pursuit of Objectivity in Science and Public Life* (1995).

n38. See Coontz, *supra* note 5.

n39. “In short, generalizations are suspect; emphasis on the particular and recognition of differences across time, race, and class are the hallmarks of rigor in modern historical scholarship.” Carbone, *supra* note 3, at 57.

n40. See, e.g., Carol Sanger, M is for the Many Things, 1 *S. Cal. Rev. L. & Women’s Stud.* 15, 18 (1992) (“For most of this century, the dominant model of motherhood has meant something closer to ‘housewife’ - a married, nonworking, inherently selfless, largely nonsexual, white woman with children.”); see generally Adrienne Rich, *Of Woman Born: Motherhood as Experience and Institution* (10th ed. 1986) (examining, in feminist terms, motherhood in a social context and as part of a political institution). For a collection of essays exploring “representations of

motherhood [which] are not essentialized, romanticized, or idealized,” see *Mothers in Law: Feminist Theory and the Legal Regulation of Motherhood* (Martha Albertson Fineman & Isabel Karpin eds., 1995).

n41. See Lawrence M. Friedman, *Rights of Passage: Divorce Law in Historical Perspective*, 63 *Or. L. Rev.* 649, 662-67 (1984) (discussing historical trends which produced no-fault). For critiques of no-fault, see Martha Albertson Fineman, *The Illusion of Equality: The Rhetoric and Reality of Divorce Reform* 32-33 (1991) (describing the impact of no-fault divorce on women). For a description of the “counterrevolutionary legal proposals” that have sprung up in response to no-fault divorce, see DiFonzo, *supra* note 35, at 881, and Laura Bradford, Note, *The Counter Revolution: A Critique of Recent Proposals to Reform No-Fault Divorce Laws*, 49 *Stan. L. Rev.* 607 (1997).

n42. Carbone relies on a Doonesbury strip to depict the phenomenon. Carbone, *supra* note 3, at 7-8 (describing a short, balding, middle-aged but wealthy executive dumping his wife for a “stunningly attractive young professional”). Carbone’s preference for cartoonist Gary Trudeau over Nobel Prize-winning economist Gary Becker reflects a very pomo preference for low culture over “high,” and for petit narrative over “grand theory.”

n43. Carbone, *supra* note 3, at 9. Carbone’s rigorous endnotes leave no ambiguity here. *Id.* at 251 (citing four recent studies). Women do not file more often because men gallantly allow them to, for example.

n44. Carbone, *supra* note 3, at 17.

n45. *Id.* at 17-18. Black women have always worked outside the home. Joan Williams, *Unbending Gender: Why Family and Work Conflict and What To Do About It* 165 (2000) (noting that “black women worked outside the home in much higher proportion than did white women until very recently”); see generally *Making a Living Doing Domestic Work*, in *Black Women in White America* 227, 227-39 (Gerda Lerner ed., 1992).

n46. See Editorial, *Mom the Provider*, *N.Y. Times*, May 14, 1995, at E14 (citing a Louis Harris & Associates poll showing that women “share equally with their husbands in supporting their families”); Sue Shellenbarger, *Women Indicate Satisfaction with Role of Big Breadwinner*, *Wall St. J.*, May 11, 1995, at B1 (citing a study by the Families and Work Institute showing that “55% of employed women bring in half or more of their household income”).

n47. Carbone, *supra* note 3, at 19.

n48. The limitations of abstract metanarratives in general (and those positing humans as ‘rational actors’ in particular) is a recurring theme in postmodernism. See John Gray, *The Best-Laid Plans*, *N.Y. Times Bk. Rev.*, Apr. 19, 1998, at 36 (“But scientific knowledge is too abstract to capture our understanding of local circumstances- the practical knowledge the ancient Greeks called metis, which carried Odysseus through his adventures.”).

n49. Carbone, *supra* note 3, at 19.

n50. Dowd, *supra* note 7, at 83 (“When men parent to the extent typical of women, their parenting is remarkably similar to mothering. It is not distinctively ‘male.’ When men nurture children, they do so just as well as women, even if as a group they do less.”). “One of the most striking trends to emerge from recent census data [is that] the number of ... single fathers with primary custody of their children has risen about 50% from 1990 to 2000.” Goldberg, *supra* note 23, at 1; see generally Armin A. Brott, *The Single Father: A Dad’s Guide to Parenting Without a Partner* (2000); Warren Farrell, *Father and Child Reunion: How to Bring the Dads We Need to the Children We Love* (2001); *Responsible Single Fathers*, at <http://www.singlefather.org> (last visited Jan. 30, 2002).

n51. Dowd, *supra* note 7, at 2. The membership and substantive agenda of the “fathers’ rights movement” is an open question. Goldberg, *supra* note 20, at 48 (estimating the movement’s membership at somewhere between five thousand and ten thousand).

n52. Dowd, *supra* note 7, at 60; see also *Review & Outlook: The Dad Deficit*, *Wall St. J.*, June 15, 2001, at W19 (noting with approval that George W. Bush announced federal aid for local pro-fatherhood efforts at the Fourth National Summit on Fatherhood and concluding that “the crucial measure [between the haves and have-nots in this country] is not whether families have money in the bank but whether they have a dad in the home”).

n53. Dowd, *supra* note 7, at 60. But see, e.g., Carbone, *supra* note 3, at 117 (“More recent studies find that enhanced paternal involvement correlates with increased cognitive competence (and higher grades), greater empathy, less sex-stereotyped beliefs, and a more internal locus of control (not to mention greater teacher appreciation of field trip participation).”).

n54. Heather Ruth Wishik, *To Question Everything: The Inquiries of Feminist Jurisprudence*, 1 *Berkeley Women's L.J.* 64 (1985) (urging feminists "to question everything").

n55. Gay fathers "might offer insights into what male parenting might be like outside conventional gender groups." Dowd, *supra* note 7, at 78. But see Brendan Farrington, *Judge Rules Florida Can Ban Gays from Adopting*, *Knoxville News-Sentinel*, Aug. 31, 2001, at A1 (discussing federal judge's upholding of Florida's law banning homosexuals from adopting). See generally Am. Psychological Ass'n, *Lesbian and Gay Parenting: A Resource for Psychologists* 8 (1995) (reviewing forty-three empirical studies as well as other articles and concluding that "not a single study has found children of gay and lesbian parents to be disadvantaged in any significant respect relative to children of heterosexual parents") (cited in David L. Chambers & Nancy D. Polikoff, *Family Law and Gay and Lesbian Family Issues in the Twentieth Century*, 33 *Fam. L.Q.* 523, 539 & n.50 (1999)).

n56. See, e.g., Vicki Schultz, *Reconceptualizing Sexual Harassment*, 107 *Yale L.J.* 1683, 1690-91 (1998) (offering "a new account of hostile work environment harassment that emphasizes its role in reproducing work and work competence along masculine and feminine lines"). For an analysis of the difficulties faced by American fathers taking family leave, see Martin H. Malin, *Fathers and Parental Leave*, 72 *Tex. L. Rev.* 1047 (1994). See also Michael Selmi, *Family Leave and the Gender Wage Gap*, 78 *N.C. L. Rev.* 707 (2000) (suggesting a contract set-aside program to reward employers for establishing leave policies that succeed in getting men to take more parental leave); Williams, *supra* note 45 (proposing a broad range of strategies to address gendered divisions of market and family work). Dowd herself has contributed to this work. See, e.g., Nancy E. Dowd, *Work and Family: The Gender Paradox and the Limitations of Discrimination Analysis in Restructuring the Workplace*, 24 *Harv. C.R.-C.L. L. Rev.* 79 (1989).

n57. Dowd, *supra* note 7, *passim*. There are more than two million single fathers in the U.S., comprising at least one-sixth of the country's single parents, up from one-ninth in 1970. Goldberg, *supra* note 23, at 1; see also Nancy Levit, *Feminism for Men: Legal Ideology and the Construction of Maleness*, 43 *UCLA L. Rev.* 1037, 1075 (1996); Barbara Stark, *Guys and Dolls: Remedial Nurturing Skills in Post-Divorce Practice, Feminist Theory, and Family Law Doctrine*, 26 *Hofstra L. Rev.* 293 (1997).

n58. Dowd, *supra* note 7, *passim*; see also Samuel Issacharoff & Elyse Rosenblum, *Women and the Workplace: Accommodating the Demands of Pregnancy*, 94 *Colum. L. Rev.* 2154 (1994); see generally Francine M. Deutsch & Susan E. Saxon, *The Double Standard of Praise and Criticism for Mothers and Fathers*, *Psychol. Women Q.*, Dec. 1, 1998, at 665 (1998).

n59. Articles about these men appeared everywhere on Father's Day. See, e.g., Joe Dziemianowicz, *Solo, With Children*, *N.Y. Daily News*, June 17, 2001, at 2 (noting that "the number of fathers raising children on their own is up a whopping sixty-two percent [since 1990]"); Adam Stern, *Single Dad: Popular But Misunderstood*, *N.Y. Times*, June 17, 2001, at sect. 9, p. 1 (noting that "our [single fathers] ranks may be growing ... but we are still a curious and misunderstood minority"); Warren Farrell, *Time for a Father and Child Reunion*, *WorldNetDaily*, June 16, 2001, at [http://www.worldnetdaily.com/news/article.asp?ARTICLE\\_ID=23280](http://www.worldnetdaily.com/news/article.asp?ARTICLE_ID=23280) (last visited Jan. 25, 2002) (noting that the percentage of single fathers has almost doubled, from ten percent to nineteen percent of all single-parent households in the past twenty years).

n60. In a recent study, for example, Peg Brinig confirms that divorced fathers suffer from severe depression when they lack contact with their children. Margaret Brinig & Steven L. Nock, *Weak Men and Disorderly Women: Divorce and the Division of Labor*, in *Marriage and Divorce: An Economic Perspective* (Duos & Rowthorn eds., forthcoming 2002).

n61. Such support has probably been most fully realized in Sweden, where all parents of newborn children are entitled to stay home full time for a total of 450 days. To encourage parents to take time off, one month has been reserved exclusively for fathers and one for mothers. *New Life: A Gender Equality Magazine for New Parents* 12 (2001), available at [http://naring.regeringen.se/fragor/jam-stalldret/sonja2001/pdf/Parental benefit.pdf](http://naring.regeringen.se/fragor/jam-stalldret/sonja2001/pdf/Parental%20benefit.pdf). In 1993-94,

before [Dad's month] was introduced, more than half of all father's (!) had taken no paternity leave whatsoever before the child turned four. Today with Dad's month in place, over 80 percent of all fathers take some form of paternity leave. Almost half of all men have taken their full Dad's month. *Id.* at 15. Dowd did some of her earliest work on this topic in Sweden. See Nancy E. Dowd, *Envisioning Work and Family: A Critical Perspective on International Models*, 26 *Harv. J. on Legis.* 311 (1989).

n62. As Rena Uviller observed over twenty years ago, "unless the daily concerns of child rearing become the shared responsibility of both father and mother, there is little chance that women with children will achieve equality

outside the home.” Rena K. Uviller, *Fathers’ Rights and Feminism: The Maternal Presumption Revisited*, 1 *Harv. Women’s L.J.* 107, 109 (1978).

n63. See *supra* note 56.

n64. Because women’s identities as mothers and primary caretakers are so much stronger than men’s identities as fathers and primary caretakers, the gender division of labor will continue. Not only must men change, but so must women – they must still continue to identify themselves as parents, but they must also share fully in that status with men.

Cahn, *supra* note 10, at 214. Joan Williams makes a similar point. Williams, *supra* note 45, *passim*. For articles on the “new fatherhood,” see Jerry Adler, *Building a Better Dad, Are You a Better Father Than Your Father?* *Newsweek*, June 17, 1996, at 58 (discussing whether better, more caring, sensitive fathers are what children really need); and Nancy R. Gibbs, *Bringing Up Father*, *Time*, June 28, 1993, at 54 (“America finds its stereotypes [about fathers] crushed in the collision between private needs and public pressures.”).

n65. The risks are considerable. As Cahn notes, “It may not be safe for women to relinquish this power, not only because men will not perform homework, but because relinquishment will have detrimental impacts. When it comes to child custody, for example, working women are penalized for leaving home by losing custody to working men.” Cahn, *supra* note 10, at 222.

n66. Over half of Dowd’s thirty-six-page bibliography consists of works by social scientists. Dowd, *supra* note 7, at 248-74.

n67. Carbone, *supra* note 3, at 55-66. For a history of custody law, see Mary Ann Mason, *From Father’s Property to Children’s Rights: The History of Child Custody in the United States* (1994). For a history of fatherhood, see Robert L. Griswold, *Fatherhood in America: A History* (1993). For histories of black families, see Peggy Cooper Davis, *Neglected Stories: The Constitution and Family Values* (1997); E. Franklin Frazier, *The Negro Family in the United States* (1939); and *The Black Family: Essays and Studies* (Robert Staples ed., 4th ed. 1991). Both authors are self-professed feminists and well-versed in anti-essentialism; i.e., the notion that the category of “women” necessarily includes women of diverse races, classes and other overlapping groups. See June M. Carbone, *Economics, Feminism, and the Reinvention of Alimony: A Reply to Ira Ellman*, 43 *Vand. L. Rev.* 1463 (1990); Dowd, *supra* note 7, at 14-15; see also Elizabeth V. Spelman, *Inessential Woman: Problems of Exclusion in Feminist Thought* (1988); Kimberle Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 *U. Chi. Legal F.* 139; Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 *Stan. L. Rev.* 581 (1990); see also Dowd, *supra* note 7, at 129 (extending Dorothy Roberts’ analysis of race to sexual orientation).

n68. Carbone, *supra* note 3, at 67-84; Dorothy E. Roberts, *The Value of Black Mothers’ Work*, 26 *Conn. L. Rev.* 871 (1994). Family research has overwhelmingly focused on white families until fairly recently. See Paul R. Amato, *Life-Span Adjustment of Children to Their Parents’ Divorce*, 4 *Future Child.* 143, 148 (1994).

n69. Carbone, *supra* note 3, at 67-84; see also Donna L. Franklin, *Ensuring Inequality: The Structural Transformation of the African-American Family* (1997).

n70. See Carbone, *infra* notes 153-54. As a corollary, analyses based on African-American experience may have significance for the broader community. Because “delayed childbearing correlates directly with socioeconomic status” and “the negative consequences of single parenthood ... are borne most heavily by the children whose families have the least income[,]” Donna Franklin’s thesis that these changes in family practices ‘ensure inequality’ applies not just to African-Americans but to the society at large.” Carbone, *supra* note 3, at 126.

n71. See, e.g., Kimberle Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 *Stan. L. Rev.* 1241 (1993).

n72. “Neither [the] Hispanic culture nor the identifiable Hispanic subgroups are culturally monolithic. Hispanic culture is affected by immigration ... .” Dowd, *supra* note 7, at 74; see also *id.* at 65-75 (summarizing the literature on fathers of color); see generally Sandra T. Azar & Corina L. Benjet, *A Cognitive Perspective on Ethnicity, Race, and Termination of Parental Rights*, 18 *Law & Hum. Behav.* 249, 265 (1994) (urging that custody evaluations “be grounded in a well-articulated theory of parenting competency” taking into account “the racial and ethnic diversity in our society”).

n73. Dowd, *supra* note 7, at 132-49. Family law itself has been criticized for effectively excluding the poor. Jacobus tenBroek famously described the “dual system of family law” in a three-part article. Jacobus tenBroek, *California’s Dual System of Family Law: Its Origins, Development, and Present Status*, 16 *Stan. L. Rev.* 257 (1964) (Part 1), 16 *Stan. L. Rev.* 900 (1964) (Part 2), 17 *Stan. L. Rev.* 614 (1965) (Part 3).

n74. See, e.g., *Moore v. City of East Cleveland*, 431 U.S. 494 (1977) (striking down city ordinance restricting dwelling units to “single family” and recognizing “only a few categories of related individuals” as a family).

n75. As Cahn observes in her review of *Single Parent Families*, “[Dowd] wants to support all families, regardless of their form.” Cahn, *supra* note 15, at 236.

n76. See, e.g., Carbone, *supra* note 3, at 154 (describing the suit against Frank Serpico, the former New York City police officer who exposed corruption in the department, and was sued for child support by a woman who told him that she was using birth control).

n77. As she breezily points out, for example:

Were Fineman to illustrate her work ... she might select ... the star of *Grace Under Fire*. Grace, a more recent addition to the world of TV sitcoms, is the divorced mother of three. Jimmy, her abusive, alcoholic ex-husband, who deserted the family, has come back into the picture... . His presence is a mixed blessing.

*Id.* at 27. Earlier she has used families from well-known sitcoms (the Nelsons (*The Adventures of Ozzie and Harriet*), the Reeds (*The Donna Reed Show*), the Ricardos (*I Love Lucy*)) to breathe life into “the sexual division of labor Becker and Okin describe with successful breadwinners, full-time homemakers, tensions that build to successful resolution, and only occasional yearning for something more.” *Id.* at 16; see also Barbara Kantrowitz & Pat Wingert, *Unmarried, With Children*, *Newsweek*, May 28, 2001, at 46 (introducing a report on pomo parenting by stating: “just imagine what would happen if June and Ward Cleaver were negotiating family life these days”).

n78. See Griswold, *supra* note 67, at 224-25 (most American corporations “look askance” at paternal leave); see also Dowd, *supra* note 7, at 56 (citing research showing workplace costs for involved fathers); Joann S. Lubin, *Working Dads Find Family Involvements Can Help Out Careers*, *Wall St. J.*, May 30, 2000, at B1 (providing anecdotes about fathers being explicit about their needs for flexible schedules because of their children); Joann S. Lublin, *Yea to That ‘90s Dad, Devoted to the Kids ... But He’s Out Again?*, *Wall St. J.*, June 13, 1995, at A1.

n79. See *supra* note 66.

n80. Dowd, *supra* note 7, *passim*.

n81. See Ihab Hassen, *The Postmodern Turn: Essays in Postmodern Theory and Culture* 89 (1987) (“despite [postmodernism’s] fanatic will to unmaking, it also contains the need to discover a ‘unitary sensibility’”).

n82. Barbara Stark, *Bottom Line Feminist Theory: The Dream of a Common Language*, 23 *Harv. Women’s L.J.* 227, 228 n.8 (2000).

n83. Alan Stone, *Questions and Comments*, in *Human Rights at Harvard* 55, 59 (1997). While some postmodernists relentlessly challenge normativity, see Schlag, *supra* note 35, others concede that the process of questioning, trashing, deconstructing, “always must stop.” J.M. Balkin, *Tradition, Betrayal, and the Politics of Deconstruction*, 11 *Cardozo L. Rev.* 1613, 1627 (1990). This is not, of course, closure. Rather, as Roy Boyne and Ali Rattansi observe, “There is ... a postmodernism of ‘resistance’ as well as a postmodernism of ‘reaction.’” Roy Boyne & Ali Rattansi, *Introduction*, in *Postmodernism and Society*, *supra* note 35, at 29.

n84. Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 *Stan. L. Rev.* 581, 586 (1990).

n85. Katharine T. Bartlett, *Feminist Legal Methods*, 103 *Harv. L. Rev.* 829, 849 (1990).

n86. See, e.g., Homer H. Clark, Jr. & Ann Laquer Estin, *Domestic Relations* 621-22 (6th ed. 2000) (citing *Marisol A. v. Giuliani*, 185 F.R.D. 152 (S.D. N.Y. 1999) (problems with foster care in New York); see also Eggers, *supra* note 1 and accompanying text. Unlike Eggers, however, as a family law teacher Dowd knows that children removed from their homes may not be placed in better ones. See Nina Bernstein, *The Lost Children of Wilder: The Epic Struggle to Change Foster Care* (2001) (describing the twenty-six year history of the case against the New York City foster care system and the tragic outcomes for the children involved). But see Dowd, *supra* note 7, at 95 (citing *Smith v. Organization of Foster*

Families for Equality and Reform, 431 U.S. 816 (1977), for the proposition that foster families, like biological families, are entitled to constitutional deference).

n87. See, e.g., *Pierce v. Society of Sisters*, 268 U.S. 510, 535 (1925) (striking state statute requiring children to attend public school noting that “the child is not the mere creature of the state; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations”); *Meyer v. Nebraska*, 262 U.S. 390 (1923) (holding that state cannot prevent parents from having their children learn a foreign language); see generally Barbara Bennett Woodhouse, “Who Owns the Child?”: Meyer and Pierce and the Child as Property, 33 *Wm. & Mary L. Rev.* 995 (1992) (criticizing cases for neglecting children’s perspectives).

n88. “A system of commitment to a basic level of economic resources is the most preferable, which would require a combination of public and private resources.” Dowd, *supra* note 7, at 223.

n89. Ihab Hassan offers a schematic set of dichotomies, which suggests, for example, that postmodernism is to rhetoric as modernism is to semantics. Hassan, *supra* note 81, at 89.

n90. Dowd, *supra* note 7, at 233.

n91. Carbone, *supra* note 3, at 123. As Elizabeth Scott points out, “norms, or ‘customary law,’ regulate family relations more effectively than do formal legal enactments because norms structure conduct into roles and functions that create stable expectations.” Elizabeth S. Scott, *Pluralism, Parental Preference, and Child Custody*, 80 *Cal. L. Rev.* 615, 669 (1992); see also Barbara Bennett Woodhouse, *Of Babies, Bonding, and Burning Buildings: Discerning Parenthood in Irrational Action*, 81 *Va. L. Rev.* 2493, 2494 (1995) (stressing “the effects of legal rhetoric in shaping extralegal cultural norms”). Katharine Silbaugh has criticized Carbone for her apparent “inconsistency” on the impact of reform efforts. Katharine B. Silbaugh, *Accounting for Family Change*, 89 *Geo. L.J.* 923 (2000) (book review); see also Bix, *supra* note 14. That such efforts might be productive in some contexts and futile in others seems unremarkable. Carbone recognizes the limits of such efforts now, given our “postmodern condition,” which is an important insight.

n92. As she observes, citing Justice Stevens in *Lehr v. Robertson*, 463 U.S. 248 (1983), even the Supreme Court has acknowledged that the “intangible fibers that connect parent and child have infinite variety.” Carbone, *supra* note 3, at 167.

n93. David Harvey, *The Condition of Postmodernity: An Enquiry into the Origins of Cultural Change* 44 (1989).

n94. “She and I are collaborating peacefully, tag-teaming, doing the parent-teacher conferences together. We are a circus family, a trapeze family, with perfect timing, great showmanship, tight green outfits.” Eggers, *supra* note 1, at 301.

n95. *Id.* at 82.

n96. See Marygold S. Melli et al., *Child Custody in a Changing World: A Study of Postdivorce Arrangements in Wisconsin*, 1997 *U. Ill. L. Rev.* 773 (empirical study of changing child custody arrangements); see also Margaret F. Brinig & F.H. Buckley, *Joint Custody: Bonding and Monitoring Theories*, 73 *Ind. L.J.* 393 (1998) (examining underlying theories of joint custody); Elizabeth S. Scott et al., *Children’s Preference in Adjudicated Custody Decisions*, 22 *Ga. L. Rev.* 1035 (1988) (reporting empirical study finding social norm supporting participation by adolescents in custody determinations); Gerald W. Hardcastle, *Joint Custody: A Family Court Judge’s Perspective*, 32 *Fam. L.Q.* 201 (1998) (arguing that joint custody agreements should be carefully scrutinized).

n97. As Carbone notes, for example, “In the 1990s, this [more egalitarian] partnership ideal is under assault just as it is achieving its fullest realization.” Carbone, *supra* note 3, at 147.

n98. See, e.g., *id.* at 115 (“Kristin Luker, in her account of the politics of teenage pregnancy, questions whether any study can effectively control for all the differences that separate single parents from parents in other families.”).

n99. See *Lehr v. Robertson*, 463 U.S. 248 (1983) (terminating parental rights of biological father when he failed to avail himself of any of the several legal alternatives provided by state law through which he could assert paternity).

n100. [E]conomic parenthood ... [fails because the legal system cannot ensure] that economic obligations are honored. Biological models have failed because we continue to fail to establish paternity for a significant number of children. Economic models have failed because we fail to ensure payment of obligations ... [and] fail to provide adequate backup economic support when ... the obligation cannot be

paid, and fail to insure adequate, universal support (private or public) for all children. Marriage models are insufficient because so many children are born outside marriage and so many marriages fail.

Dowd, *supra* note 7, at 161; see also *Quilloin v. Walcott*, 434 U.S. 246 (1978) (terminating parental rights of biological father who had visited his son, although neither provided regular support nor legitimated him); *Davis v. Davis*, 842 S.W. 2d 588 (1992) (holding that divorcing husband could veto use of frozen embryos fertilized with his sperm).

n101. Dowd, *supra* note 7, at 161.

n102. *Id.* at 8; see generally Kathleen Gerson, *No Man's Land: Men's Changing Commitments to Family and Work* 215-55 (1993) (describing "dilemmas of involved fatherhood").

n103. "The post divorce pattern of fathers' relationships with their children is bleak and disheartening for both fathers and children." Dowd, *supra* note 7, at 59.

n104. *Id.* at 28. "Step parenting ... is an extremely common form of fatherhood in America. The data on step-families indicate that these families do not do well, and that we lack a good understanding of their dynamics or a healthy vision of how they should function." *Id.* at 85; see also Springen & Wingert, *supra* note 36, at 55 (noting that a spokeswoman from the University of Chicago "says that more than half the serious brain injuries her hospital sees in infants are inflicted by 'paramour perpetrators' - men who lack the biological and emotional connection that inhibits parents from hurting their own children").

n105. Dowd, *supra* note 7, at 179-80.

n106. *Id.* at 77. Dowd cites Katharine Bartlett's argument "for legal support of multiple parental figures, especially by a liberal use of visitation statutes" as well as Barbara Bennett Woodhouse's "kinships of responsibility" and Naomi Cahn's suggestion that "when multiple adults come forward as caretakers, we might want to consider them all rather than reducing them to two." *Id.* at 140-41. But see *Michael H. v. Gerald D.*, 491 U.S. 110 (1989) (upholding state statute precluding alleged biological father's claim to paternity of child born within extant marriage).

n107. Dowd, *supra* note 7, at 180.

n108. These include: (1) nurturing fathers who parent their children as mothers do, (2) nurturing fathers in step-families, blended families or cohabiting families, (3) "less engaged fathers who are backup or minimal nurturers plus breadwinners," *id.* at 82, (4) "disengaged fathers, some of whom play an economic role," *id.*, and (5) "fathers who have never engaged with their children and have no connection of any sort with them." *Id.*; see also Deutsch & Saxon, *supra* note 58 (describing gendered perceptions of parenting); Sean Elder, *Dabbling Dads*, *N.Y. Times Mag.*, June 11, 1995, at 30 (describing "Gentlemen Fathers" who parent on weekends, unlike the author, a primary caretaker father); see generally Dowd, *supra* note 7, at 62 ("the nurturing [fathers] who are [in fact] poorly supported by the legal structure, and often socially viewed as unmanly by their peers"); authorities cited *supra* note 59.

n109. Dowd, *supra* note 7, at 58-65.

n110. *Id.* at 75-80; see also Louis Bayard, *Two Men and a Baby*, *Wash. Post*, June 17, 2001, at W14 (reporting gay couple's adoption of a six-month-old Vietnamese boy).

n111. Dowd, *supra* note 7, at 65-75 (explaining how "the discourse of inferiority masks the realities of economic disempowerment that not only make it difficult to fulfill traditional breadwinner father roles, but also prevent that role from being recast in a more nurturing direction").

n112. *Id.* at 179.

n113. *Id.* at 58. As she notes, for example, "Overall, white children have more contact with their fathers but among nonresident fathers, Black fathers have high levels of visitation... . Black fathers, especially middle-class ones, remain involved with their families to a greater degree than white fathers." *Id.* at 70.

n114. *Id.* at 161-62.

[V]irtually all scholars emphasize how little we know, and therefore how provisional any data must be. We have neither the demographic data nor the tested correlations for fathers that we have for mothers. This factor alone is enormously indicative of our assumptions about fathers. Even more important, it demands that any definition of policy with respect to fathers be provisional.



Id. at 81.

n115. Carbone, *supra* note 3, at 51.

n116. See, e.g., *supra* note 42 (describing Carbone's use of Doonesbury; *supra* note 77 (describing sitcom families).

n117. Murphy Brown is a television journalist played by Candice Bergen, who crossed over into real politics when Vice President Dan Quayle famously criticized her decision to become a single mother. Barbara Vobejda, *Can a Sitcom Change Society?*, *Wash. Post*, May 21, 1992, at A1 (describing the “zany and almost surreal reaction: from radio talk shows to the White House” in response to Quayle's comment that the character was “mocking the importance of fathers by bearing a child alone”); see also Dan Quayle, *Why I Think I'm Still Right*, *Newsweek*, May 28, 2001, at 52 (explaining that his “concern has always been for the welfare of the child”).

n118. Carbone, *supra* note 3, at 51-52. Recognizing that “American society may not be able to reach a consensus on ‘family values,’” for example, Carbone identifies a partial, contingent consensus (“the middle class has embraced a new strategy for success”), including gender equality with respect to investment in earning capacity, education, sexual activity, and contribution to the relationship, coupled with the contingency of marriage. *Id.* at 125.

n119. Carbone, *supra* note 3, at 240; see also Jane W. Ellis, *Surveying the Terrain: A Review Essay of Divorce Reform at the Crossroads*, 44 *Stan. L. Rev.* 471, 476 (1992) (book review) (arguing that mothers are especially vulnerable because they often put their relationships with their children above all other considerations). For a promising approach to this problem, see Scott Altman, *Lurking in the Shadow*, 68 *S. Cal. L. Rev.* 493, 527 (1995) (arguing that settlement agreements should be submitted in distinct stages so that custody and visitation arrangements would have to be approved prior to any financial agreement). In 1993, a number of states had enacted “friendly parent” statutes which penalize parents who fail to facilitate the other parent's contact with the child. *Developments in the Law: Legal Responses to Domestic Violence, Battered Women and Child Custody Decisionmaking*, 106 *Harv. L. Rev.* 1597, 1601 (1993). For a critical assessment of such statutes, see Elizabeth Scott & Andre Derdeyn, *Rethinking Joint Custody*, 45 *Ohio St. L.J.* 455, 476 (1984).

n120. Carbone, *supra* note 3, at 240. For a discussion of the ways in which courts subject men as well as women to gender bias in custody cases, see Levit, *supra* note 57, at 1075.

n121. Custody is now generally determined by the “best interest of the child” standard. See, e.g., *Unif. Marriage and Divorce Act* 402 (amended 1973), 9A *U.L.A.* 156 (1987) (including among factors to be considered in determining the “best interest of the child,” parents' wishes, child's wishes, child's relationships with parents and others, child adjustment to home, school, and community, and mental and physical health of all involved); Beth K. Clark, *Acting in the Best Interest of the Child: Essential Components of a Child Custody Evaluation*, 29 *Fam. L.Q.* 19 (1995) (describing how psychologists involved in custody disputes can apply this standard). But see Joseph Goldstein et al., *Beyond the Best Interests of the Child* (1973) (concluding that it is better for the child to be placed with the “psychological parent,” that is, the adult with whom the child is most strongly bonded). For a summary of the scholarship refuting men's claims that the best interest standard is a pretext for maternal bias, see Terry Arendell, *Fathers and Divorce* 77-83 (1995).

n122. Carbone, *supra* note 3, at 240; see also Melli et al., *supra* note 96, at 800. Carbone synthesizes the Supreme Court cases on paternal rights as well as the commentary of leading scholars and several state supreme court justices to identify three extant models of fatherhood: (1) biological fathers, who receive legal recognition absent abandonment or forfeit; (2) “fathering” determined by bonding or nurturing; and (3) fathering conceived as a role fundamentally different from (and complementary to) mothering. Carbone, *supra* note 3, at 164. She proposes the following bottom line: a father should (1) not endanger the baby's well-being during pregnancy, (2) assure that the baby is cared for, and (3) above all, make a permanent commitment to the child. *Id.* at 178-79; see also *In re Raquel Marie X.*, 173 *A.D.2d* 709 (N.Y. App. Div. 1991) (holding that a three-year-old child could remain with her adoptive parents where biological father did not establish paternity until after the adoption, contributed minimally to expenses during pregnancy and did not help care for newborn); see generally Deborah Forman, *Unwed Fathers and Adoption: A Theoretical Analysis in Context*, 72 *Tex. L. Rev.* 967 (1994).

n123. Carbone, *supra* note 3, at 241.

n124. Fredric Jameson, *Postmodernism, or, the Cultural Logic of Late Capitalism* (1991).

n125. See, e.g., Margaret Jane Radin, *Market-Inalienability*, 100 *Harv. L. Rev.* 1849, 1921 (1987) (arguing that certain core aspects of personhood should similarly be inalienable); Katharine Silbaugh, *Commodification and Women's Household Labor*, 9 *Yale J.L. & Feminism* 81 (1997).

n126. See Memorandum from Martha Ertman to Barbara Stark, *Call for Papers/Commodification Futures: Rethorizing Commodification* (July 2000) (on file with author); see also Norman K. Denzin, *Postmodernism and Deconstructionism*, in *Postmodernism and Social Inquiry* 182, 184 (David Dickins & Andrea Fontanades eds., 1994) (linking postmodernism to the commodification of sexuality and desire).

n127. See, e.g., Dowd, *supra* note 7, at 133 (“By making a father’s absence a negative to be avoided, and his presence as critical to all members of the family - and simultaneously defining presence in economic terms as based on wage work - fathers came to be almost exclusively defined in economic terms.”).

n128. Carbone, *supra* note 3, at 51 (describing the delegation of caregiving work to underpaid nannies); see generally Emma Rothschild, *Who’s Going to Pay for All This?*, *N.Y. Times*, July 1, 2001, at 10 (describing economist’s analysis of the costs of caregiving).

n129. Nancy Folbre, *The Invisible Heart: Economics and Family Values* 50 (2001) (arguing that nurturing is undervalued, in part, because no effort is made to impute a value to “happy, healthy, and successful children”).

n130. See Carbone, *supra* note 3, at 252 n.6; Dowd, *supra* note 7, at 53-54. For Eggers, twenty-four hours a day, seven days a week, childcare is costing him his youth, not to mention his sex life (he does, of course, mention it). See, e.g., Eggers, *supra* note 1, *passim*. At the same time, his deep ambivalence about hiring a sitter makes it impossible for him to enjoy the few hours of free time he purchases. *Id.*

n131. For a survey of the wide-ranging estimates, see Thomas J. Espenshade, *Investing in Children: New Estimates of Parental Expenditures* (1984). In addition to time spent, there may be lost opportunity costs, such as high-paying jobs turned down because of inflexible hours or required travel. See generally Jean L. Potuchek, *Who Supports the Family? Gender and Breadwinning in Dual-Earner Marriages* (1997) (arguing that “breadwinning” is socially constructed and negotiated and also affected by mothering).

n132. Arlie Hochschild & Ann MacHung, *The Second Shift* 8-10 (1989); see also Paul Starr, *Women’s Work*, *N.Y. Times Book Rev.*, Feb. 11, 2001, at 9 (“Despite all the customary praise of mothers, the devaluation of their work is deeply entrenched in our thought and institutions.”).

n133. *Gomez v. Perez*, 409 U.S. 535 (1973) (holding that illegitimate children have as much right to child support as legitimate children).

n134. See, e.g., Bartholet, *supra* note 20, at 59 (arguing that “huge numbers of children are growing up in this country without what all children need - true parenting”). “If you follow the logic of the market, you end up with a childless society.” Kristina Hultman, *A Step Away from a Childless Society?*, in *New Life: A Gender Equality Magazine for New Parents* 11 (2001), available at <http://naring.regeringen.se/fragor/jamstalldret/Sonja2001/pdf/Parenthood.pdf> (describing the work of sociologist Gunnar Andersson, whose research focuses on the relationship between work and family life in the Nordic countries).

n135.

Our policies assert that it should be less comfortable to be on welfare than to work, which is sensible. They also assert that a mother who cannot feed and house her child should not raise them, which also is sensible. The consequences are not. Lamont’s care cost the city half a million dollars, far more than it would have cost to support his mother, and it repeatedly and traumatically severed him from an enduring human relationship, as crucial to a child’s development as food and heat.

Tanya Luhrmann, *A Perfect Test Case*, *N.Y. Times Book Rev.*, Mar. 25, 2001, at 8; see also Lynn A. Stout, *Some Thoughts on Poverty and Failure in the Market for Children’s Human Capital*, 81 *Geo. L.J.* 1945 (1993).

n136. See Porter, *supra* note 37 (explaining why numbers used in public policy debates are problematic).

n137. According to the Census Bureau, thirty-eight percent of single fathers receive child support compared to sixty percent of single mothers. The average amount received by both as of 1997 was \$ 3,300 per year. Goldberg, *supra* note 23, at 14.

n138. As Carbone puts it, while “child support rests ... on natural love and affection, and societal insistence that parents assume responsibility for the children they bring into the world ... these sentiments, ... though almost universally shared, do not dictate particular dollar amounts.” Carbone, *supra* note 3, at 155.

n139. See, e.g., Nan D. Hunter, *Child Support Law and Policy: The Systematic Imposition of Costs on Women*, 6 *Harv. Women’s L.J.* 1 (1983). The ongoing debates can be traced in the series of federal acts addressing the topic. See, e.g., *Social Services Amendments of 1974*, Pub. L. No. 93-647, 88 Stat. 2337 (codified as amended in scattered sections of 26 U.S.C. and 42 U.S.C.) (requiring state to establish child support programs); *Child Support Enforcement Amendments of 1984*, Pub. L. 98-378, 98 Stat. 1305 (codified as amended in sections of 26 U.S.C. and 42 U.S.C.); *Family Support Act of 1988*, Pub. L. 100-485, 102 Stat. 2343 (codified as amended in sections of 26 U.S.C. and 42 U.S.C.). Dowd characterizes the “massive effort to increase child support” as “disappointing and hardly cost-effective.” Dowd, *supra* note 7, at 148.

n140. See generally Laura W. Morgan, *Child Support Guidelines: Interpretation and Application* (1996 & Supps. 1997-99).

n141. Pub. L. 104-193, 110 Stat. 2105 [hereinafter PRWORA]. For a cogent summary of earlier efforts, see Paul K. Legler, *The Coming Revolution in Child Support Policy: Implications of the 1996 Welfare Act*, 30 *Fam. L.Q.* 519 (1996).

n142. Mothers are the custodial parents in the vast majority of cases. Stark, *supra* note 57, at 307-08. Where fathers are the custodial parents, however, child support plummets. Dowd, *supra* note 7, at 143. The inadequacy of child support guidelines had been confirmed by Marsha Garrison in a scathing critique. Marsha Garrison, *Autonomy or Community? An Evaluation of Two Models of Parental Obligation*, 86 *Cal. L. Rev.* 41, 57-72 (1998).

n143. See, e.g., *State v. Hall*, 418 N.W.2d 187, 190 (Minn. Ct. App. 1988) (holding child support award against singer Daryl Hall capped by guidelines because “it would be inappropriate to use a child support obligation to upgrade [mother’s] standard of living”).

n144. The legal system’s objectives of increasing child support awards and payment for both marital and non-marital children represent a “radical change in theory, and an even more radical change in reality, within the span of only a few decades.” Dowd, *supra* note 7, at 145.

n145. *Id.* at 144. This is grounded in the history of child support and confirmed in its modern iteration: “Child support is commonly viewed as a proportionate share of parental income, not of children’s needs. Proportionality means that parental resources may be adequate for needs but are not tapped, while, in other cases, parental resources are not adequate but not so inadequate as to trigger state support.” *Id.*

n146. Annamay T. Sheppard, *Paying for Women’s Work: The Unfinished Business of American Family Law, in Comparative Perspectives: Gender Bias and Family Law 1* (Barbara Stark ed., 1992); see also Ann Crittenden, *The Price of Motherhood: Why the Most Important Job in the World Is Still the Least Valued* (2001).

n147. Carbone, *supra* note 3, at 162-63.

n148. Dowd, *supra* note 7, at 153. “If you’re not involved emotionally, there’s no motivation to stay involved financially,” according to Robert Green, a member of the Texas Fathers Alliance which worked to amend the Texas Family Code to include a presumption of joint custody in 1995. Goldberg, *supra* note 20, at 52.

n149. “Strong evidence demonstrates that even if the system were fully implemented and all support were paid, the support would be inadequate to meet the needs of children.” Dowd, *supra* note 7, at 222.

n150. Even if the children do qualify for welfare, there are constitutional limits on methods to coerce payment. *Zablocki v. Redhail*, 434 U.S. 374 (1978) (holding that fundamental right to marry cannot be conditioned on payment of past child support). But see *Associated Press, Court Lets Stand Ban on More Kids Unless Man Pays Child Support*, *Milwaukie J. Sentinel*, Nov. 24, 2001, at 2B (reporting Wisconsin Supreme Court’s decision to uphold lower court decision sentencing David Oakley to prison for failure to pay child support stayed in favor of probation on the condition that Oakley not father any children unless he could prove to this court that he could support the new child in addition to his other nine).

n151. “The poverty statistics for all children are alarmingly high, but for Black and Hispanic children the figures are catastrophic. More than 40 percent of all Black and Hispanic children are poor, compared to 16 percent of white

children.” Dowd, *supra* note 7, at 68. As Dowd notes critically, “the rate of child poverty shows little sign of abatement as sufficiency issues have been unaddressed while the focus has been on enforcement [of child support].” Dowd, *supra* note 7, at 146.

n152. *Id.* (“The welfare system was never intended to benefit fathers. Fathers were presumed able to work and support their families under the breadwinner definition of fatherhood. The social welfare system for men was linked to work, to benefits that were seen as entitlements - unemployment, worker’s compensation, and disability payments.”). Citing Richard Collier, Dowd describes the court’s outrage where a father

wanted to live on social security in order to care for his four-year-old child. The judge stated that it would be plainly wrong and silly if the father were to remain unemployed in order to look after one 4-year-old boy ... I shall take a great deal of convincing that it is right that an adult male should be permanently unemployed in order to look after one small boy.

Dowd, *supra* note 7, at 134.

n153. Carbone, *supra* note 3, at 199.

n154. *Id.*

n155. The danger of providing economic support to families is not that it would promote irresponsibility, but rather that we might avoid dealing with the more difficult structural problems faced by men disadvantaged by race, class, or sexual orientation, especially the lack of economic opportunity tied to educational, housing, and employment problems.

Dowd, *supra* note 7, at 222.

n156. See Carbone, *supra* note 3, at 16-19.

n157. Dowd, *supra* note 7, at 221; see also Bartholet, *supra* note 20, at 163-75 (describing early intervention through home visitation programs for first-time mothers).

n158. See, e.g., Starr, *supra* note 132, at 9 (“Raising children is not just another form of personal satisfaction; the flourishing of the entire society depends upon the willingness to undertake it.”).

n159. See generally Margaret Buttenheim, *Women or Children First?*, *Women’s Rev. Books*, Mar. 2001, at 10, 12

(All [three books reviewed] acknowledge that, post-divorce, the primary work of raising children, supporting them, nurturing them, providing whatever college money they receive, often falls to women, and women in general do not have the financial resources to do this well. To the degree that we leave to each woman alone the job of getting her children into the lifeboat, as a society we are abandoning our children.).

n160. Carbone, *supra* note 3, at 35-41; Starr, *supra* note 132, at 9

(The child benefits and other European policies that Crittenden holds up as models have long enjoyed conservative support, partly because of their pro-natalist implications. If the white Protestants who make up the heart of American conservatism start to worry more about their own falling birth rates, they might begin moving in that direction.).

n161. As Princeton Professor Paul Starr notes, “compared with the European societies that offer paid maternity leave of up to a year (with benefits based on prior earnings) as well as child benefits (cash payments per child not contingent on poverty), America has not done much to spread the costs of motherhood.” Starr, *supra* note 132, at 9; see also Barbara Bergman, *Saving Our Children from Poverty: What the United States Can Learn from France* (1996).

n162. See, e.g., Barbara Stark, *Postmodern Rhetoric, Economic Rights and an International Text: “A Miracle for Breakfast,”* 33 *Va. J. Int’l L.* 433 (1993) (describing America’s historic antipathy to socialism); Barbara Stark, *International Human Rights Case, Feminist Jurisprudence, and Nietzsche’s “Eternal Return”*: Turning the Wheel, 19 *Harv. Women’s L.J.* 169 (1996) (describing the usefulness of the International Covenant on Economic, Social and Cultural Rights for American women).

n163. This was President Clinton’s campaign pledge. George Rodrigue, *Clinton Signs Controversial Welfare Bill*, *Dallas Morning News*, Aug. 23, 1996, at A1; see also PRWORA, *supra* note 141.

n164. Carbone, *supra* note 3, at 180-94 (describing custody disputes).

n165. See, e.g., Barbara Bennett Woodhouse, *Hatching the Egg: A Child-Centered Perspective on Parents' Rights*, 14 *Cardozo L. Rev.* 1747, 1838 (1993) (urging adults to ask how have “children’s experiences and values been left out of the law”); Gilbert A. Holmes, *The Tie That Binds: The Constitutional Right of Children to Maintain Relationships with Parent-like Individuals*, 53 *Md. L. Rev.* 358 (1994) (urging the recognition of a child’s liberty interest in certain parent-like relationships); Barbara Bennett Woodhouse, *Children’s Rights: The Destruction and Promise of Family*, 1993 *BYU L. Rev.* 497. For a description of the ways in which the law generally disempowers children, see Ira C. Lupu, *The Separation of Powers and the Protection of Children*, 61 *U. Chi. L. Rev.* 1317, 1318 (1994).

n166. See Eggers *supra* note 1.

n167. “Oh, we are good. He’s only eight but together we are spectacular. We play by the shore, and we run barefoot, padding and scratching into the cold wet sand. We take four steps for each throw, and when we throw the world stops and gasps.” Eggers, *supra* note 1, at 67.

n168. *Id.* at 436.

n169. Postmodern analysis, as both authors show, is not necessarily devoid of empathy and compassion. Dowd would affirm Eggers’s connection to the larger community. She would also provide him with much-needed parenting education. See *supra* note 4 and accompanying text; Dowd, *supra* note 7, at 225-29; see generally Peter Salem et al., *Parent Education as a Distinct Field of Practice: The Agenda for the Future*, 34 *Fam. & Conciliation Cts. Rev.* 9, 10 (1996). This would simply be a first step: “It is also necessary to reorient those institutions and people who most directly deal with fathers - such as courts and hospitals - so that they do not perpetuate assumptions that undermine social fathering.” Dowd, *supra* note 7, at 226. Carbone would provide him with practical assistance, including a “community infrastructure that looks out for children, socializes them into adult roles, and bridges the gaps that families fail to fill.” Carbone, *supra* note 3, at 241.

n170. Eggers invites other real people to wander in and out of his book. Eggers, *supra* note 1, at app. 9-13. Transgressing the boundaries of genre and medium is characteristic of postmodern method. Stephen Feldman, *The Supreme Court in a Postmodern World: A Flying Elephant*, 84 *Minn. L. Rev.* 673, 693-97 (2000). Carbone merrily transgresses these boundaries throughout her rigorous and scholarly work by inserting comic strips, cartoons, and sitcoms. See, e.g., Carbone, *supra* note 3, at 9, 15, 19, 29, 64-65, 97, 133, 143, 153, 162, 179, 194, 210, 226. Dowd is similarly playful, although more restrained. See, e.g., Dowd, *supra* note 7 (cover photo of a man’s arms and a gleeful airborne baby); *id.* at 19-21 (describing fantasy Father’s Day).