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Feminism and Hyper-Masculinity in Israel: A Case Study in Deconstructing Legal Fatherhood

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Feminism and Hyper-Masculinity in Israel: A Case Study in Deconstructing Legal Fatherhood

Karin Carmit Yefet†

ABSTRACT: Feminism has largely treated men as the undifferentiated dominant gender group, neglecting a discussion of men's own gender identity. As a result, the legal conceptualization of masculinity is still under-explored; a tapestry of legal doctrines renders inconsistent ideological messages about what it means to be a "man," and especially what it means to be a father. Israeli legal scholarship, in particular, has done little to explore how extensively stereotypes of masculinity permeate existing law and undermine the role of men as parents.

This Article fills in this academic void and begins the project of answering the largely ignored "man question," that is, how the law constrains male gender roles and how those constraints inhibit the father-child relationship. Through the critical lens of masculinities theory, I explore how and why male gender identity may frustrate father care in general and to Israeli father care in particular. As I argue, the Zionist conception of hegemonic masculinity promotes a hyper-masculine archetype for Israeli men.

The Article then analyzes a diverse body of doctrines, from reproductive technologies law to child custody and support law, to expose the sophisticated ideological work done by the law in entrenching an essentialist form of idealized masculinity through what I term a "bio-economic model" of fatherhood. The Article concludes by promoting a new legal model of "engaged fatherhood" as an integral component of male citizenship in Israel.

While the Article focuses on Israel as a case study, entrenchment of gendered parenting roles is a near-universal problem, addressed by feminism and masculinities studies across various legal systems. It is hoped that the

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analysis and insights developed here will serve to inform debate and potential reform elsewhere in the western world.

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INTRODUCTION

Feminism has largely treated men as the undifferentiated dominant gender group, neglecting a discussion of men's own gender identity. Legal feminist theory in any incarnation still clings to an uncritical and essentialist portrait of

men,[1] remaining largely blind to the ways in which men are harmed by legal constructs that perpetuate gender stereotypes.[2]

Liberal feminism, subscribing to equal treatment theory, perceives men as the benchmark point of reference, without providing a normative analysis of male norms and while reinforcing traditional male gender expectations.[3] Cultural feminism or feminism of difference views men as the "other." Difference theory is fundamentally essentialist, affording men an identity only through their differences to women while ignoring the possibility that gender may instead exist across a spectrum.[4] Radical feminism, in its turn, conceptualizes men as oppressors and perpetrators. Dominance theory imagines men as a class that victimizes women, and, in circumscribing the gender this way, generally fails to consider power differentials among men or that privilege comes at a cost to many of them.[5] Postmodern feminism, concerned with the challenges of essentialism, offers a woman-centered theory that simplistically omits men altogether.[6]

It is of little surprise that, to this day, the legal conceptualization of masculinity is still under-explored. A tapestry of legal doctrines renders inconsistent ideological messages about what it means to be a "man."[7] While a growing number of legal scholars have embarked on the deconstruction of

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1. *See e.g.*, NANCY E. DOWD, THE MAN QUESTION: MALE SUBORDINATION AND PRIVILEGE 13 (2010) [hereinafter DOWD, THE MAN QUESTION] (noting that men have been traditionally absent in feminist scholarship, treating them primarily as members of a privileged class or as holders of power and dispensers of subordination); Nancy E. Dowd, *Masculinities and Feminist Legal Theory*, 23 WIS. J.L. GENDER & SOC'Y 201, 204 (2008) [hereinafter Dowd, *Masculinities*] ("In much feminist analysis, men as a group largely have been undifferentiated, even universal. What has been critiqued as essentialist when considering women as a group has been accepted with respect to men.").

2. Nancy Levit, *Feminism for Men: Legal Ideology and the Construction of Maleness*, 43 UCLA L. REV. 1037, 1038 (1996). *But see generally* Martha Albertson Fineman, *Feminism, Masculinities, and Multiple Identities*, 13 NEV. L.J. 619 (2013) (defending feminist legal theory and critiquing identity-based theories).

3. Levit, *supra* note 2, at 1042-44 (noting that equal treatment theorists have failed to "spin out the systematic implications of a wide variety of rules and laws which perpetuated gender role stereotypes that harmed men as well").

4. *Id.* at 1044-47 (analyzing the legal treatment of men by cultural feminism). In fact, some scholars go so far as to suggest that cultural feminism promotes a "separatist philosophy that men cannot be reconciled with or included in feminism." *Id.* at 1046.

5. *See, e.g.*, CATHARINE A. MACKINNON, FEMINISM UNMODIFIED 3 (1987); *see also* Keith Cunningham-Parmeter, *Men at Work, Fathers at Home: Uncovering the Masculine Face of Caregiver Discrimination*, 24 COLUM. J. GENDER & L. 253, 270 (2013); Levit, *supra* note 2, at 1049 ("Dominance theory opens the door to an essentialist position for the viewing of men as a uniform collective: none are better, some are worse, and all are guilty.").

6. Levit, *supra* note 2, at 1051 ("In struggling with the 'no woman, many women' concept, much of postmodern feminism simply omits men," the reason for which is "not that men are irrelevant or that they are evil, but principally that the focus is on a different subject: woman or women.").

7. *Id.* at 1052 ("[T]here has been no systematic application of feminist theory to stereotypes that injure men . . . . [F]eminism in the modern era has done little to examine the more sophisticated and subtle ways in which stereotypes . . . affect men.").

various concepts of masculinity in Anglo-American law,[8] Israel's jurisprudential inquiry into male gender identity remains at best embryonic.[9] In particular, Israeli legal scholarship has done little to explore how extensively stereotypes of masculinity permeate existing law and undermine the role of men as parents.

This article challenges the puzzling academic void and focuses on a pivotal yet overlooked construct of masculinity: the hidden assumptions the law makes about the proper role a father should play in his children's lives and the brand of Israeli masculinity such assumptions ultimately prescribe.[10] In the Israeli national imagination, the "social contract" that affords full citizenship status on men and women is gendered: women must bear and raise their children; men must protect the collective as soldiers and care for their families as providers.[11] Betraying the marginality of fatherhood in a man's civic obligations, relevant scholarly writings tend to focus almost exclusively on motherhood, analyzing the status of women as mothers in various legal arenas such as family law, constitutional law, labor law, and feminist legal theory.[12]

This article aims to take fatherhood out of the Israeli closet. I argue that the legal regulation of the parent-child relationship plays an important role in entrenching what I term a "hyper-masculine" archetype for Israeli men. This archetype is painfully narrow, mandating, inter alia, what I call a bio-economic model of fatherhood: it excludes men from caring and nurturing roles and focuses instead on biological connection and economic contribution. This myopic conception is embedded in various laws regulating paternity and family life. Both areas of regulation envision men as public servants of the state, precluding men from seeing themselves as active fathers and rendering caregiving a highly gendered activity. Just as sexual orientation has been liberated from the closet, so too it is time for Israeli fatherhood to emerge from the socio-legal closet.

Feminist theory has done little to challenge the myth that parenting is a sex-linked trait; it has provided us with images of competent women in the public sphere, but not of nurturing men in the domestic sphere.[13] Its

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8. For an illuminating summary of the development of the literature in masculinities studies, see Richard Collier, *Masculinities, Law, and Personal Life: Towards a New Framework for Understanding Men, Law, and Gender*, 33 HARV. J.L. & GENDER 431 (2010).

9. *See* Eti Libman Offaim, *Feminism, Men and Masculinity: Applying Masculinity Theories to the Court Ruling Regarding Ultra-Orthodox Army Drafting*, 16 HAMISHPAT 343, 347 (2011) (in Hebrew) (reporting the "surprising" finding that "there is no legal writing employing masculinity theories").

10. This paper is limited to the concept of masculinity for Jewish men. This is largely because I focus on areas of religion-influenced law such as child custody and support.

11. Karin Carmit Yefet, *Born to Be a Mother: Shaping Substantive Citizenship for Women in Israel*, 39 HARV. J.L. & GENDER (forthcoming 2015).

12. One interesting exercise is to check how many article titles include the word "motherhood" in comparison to "fatherhood"; a simple search on LexisNexis found that those with the former were more than double those with the latter.

13. Levit, *supra* note 2, at 1073.

counterpart, masculinities theory, has also failed to fill that gap. While it has made great strides in deconstructing men's roles in society—positing that masculinity is socially, rather than biologically determined, and that men are subject to regular trials to prove their masculinity as defined by social norms—it has not yet engaged in a normative dismantling of male power and privilege under patriarchy.[14] Still, several masculinities scholars have pointed to caregiving work as one of the keys to transforming men and to developing a vision of masculinity compatible with gender equality.[15] For this reason, it is of particular importance to analyze how the law problematizes domestic masculinity and what messages it sends about the "good father."

This research project will illuminate male gender construction in order to expose gender role stereotyping as unjust, explore the socio-legal ramifications of categorical assumptions about both women *and* men, and unearth the universality of harm that underlies patriarchy. While feminists have long explored the harm the patriarchal order does to women, masculinities theory has further exposed the harm it does to men. When individual men are required to consistently prove their merits as defined by gender norms, their power as a group belies their powerlessness as individuals.[16] The urgency, then, of understanding how male privilege is constructed, sustained, and ultimately harms even men themselves is essential not only to dismantling gender hierarchy, but also to fostering collaboration across gender lines in this feminist project.[17] Put succinctly, the "man question" is indispensable in answering the "woman question" in feminist jurisprudence. Only by viewing both sides of the coin may we fully address women's subordination.

While the Article focuses on Israel as a case study, entrenchment of gendered parenting roles is a near-universal problem, addressed by feminism and masculinities studies across various legal systems. It is hoped that the analysis and insights developed here will serve to inform debate and potential reform elsewhere in the Western world.

In the pages that follow, I aim to unravel Israeli law's bio-economic model of fatherhood in order to deconstruct its narrow vision of masculinity. I do so in four Parts.

The first Part begins in the burgeoning field of masculinities studies. It seeks to unpack the stereotypical "man" defined by the law with the aid of these nascent theories—that is, to conceptualize what "man" means as a gender

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14. Connell, a leading theorist in masculinities studies, terms the resulting "advantage to men as a group from maintaining an unequal gender order" the "patriarchal dividend." R.W. CONNELL, MASCULINITIES 229-30 (2d ed. 2005). For an introduction to masculinities theory, see *infra* Part I.A.

15. William S. Pollack, *No Man Is an Island: Toward a New Psychoanalytic Psychology of Men*, *in* A NEW PSYCHOLOGY OF MEN 33, 55-57 (Ronald E. Levant & William S. Pollack eds., 1995); CONNELL, *supra* note 14, at 229-30.

16. For an exposition of masculinities theory, its purposes and achievements, see *infra* Part I.A.

17. DOWD, THE MAN QUESTION, *supra* note 1, at 5, 17.

category in the Israeli legal system. Through the critical lens of masculinities theory, I explore how and why male gender identity may present a substantial obstacle to father care in general and to *Israeli* father care in particular. As I argue, the Zionist-oriented conception of hegemonic masculinity promotes a *hyper*-masculine archetype for Israeli men.

Parts II and III connect the theoretical insights of masculinities scholarship to the legal regime of parental formation and post-divorce regulation. They explore the sophisticated ideological work that law does in entrenching a particular form of idealized masculinity—one antithetical to active fathering and the emotional work that goes with it. Part II probes reproductive technologies law and concludes that in contradistinction to the definition of motherhood as social and nurturing, the definition of fatherhood is biological and economic. Part III focuses on child support and custody law in both heterosexual and homosexual families, exposing the breadwinner masculinity norms that undergird various legal doctrines. The law's gendered expectations pressure men to conform to the bio-economic model of fatherhood and contribute to a limited and essentialist view of what it means to be an Israeli male.

The last Part calls for a rethinking of paternal responsibility, suggesting ways that the law might help change societal perceptions of what is expected of a "good dad." The article concludes by developing a new legal model of "engaged fatherhood" as an integral component of male citizenship in Israel.

I. MASCULINITIES THEORY AND THE CONSTRUCTION OF JEWISH MANHOOD IN ISRAEL

This Article explores the Israeli-accentuated manifestation of a general Western phenomenon, namely, the asymmetric gender revolution. While women in recent years have entered the workforce in unprecedented numbers, men have failed to make parallel strides in the sphere of domestic work.[18] Most Israeli men are secondary caregivers at best, entirely uninvolved with their children at worst.[19] This Part builds on masculinities theory to suggest that a pivotal reason for this persistent asymmetry is the socio-legal construction of masculinity in Israel.

A. The Western Male and "Hegemonic Masculinity"

Before unpacking the barriers to involved fatherhood, it is worthwhile to first locate the problem in the context of the burgeoning field of masculinities

18. Ruth Gaunt, *Is Daddy Home? Determinants of Paternal Involvement in Child Care*, 45 MEGAMOT, BEHAV. SCI. Q. 103, 103 (2007) (in Hebrew).

19. For the exposition of this gendered picture, see *infra* Part III.

theory. Masculinities studies originated as an outgrowth of feminist and queer theory, most prominently in sociology and social psychology,[20] and entered the realm of legal theory only in the twenty-first century.[21] One of the theory's central postulates has been to make men—and not only women—the proper subject of gender analysis.[22] This cross-disciplinary body of work has exposed masculinity as a socially-constructed, rather than genetically preordained, concept, prescribing a complex web of characteristics men must obey in order to validate their identities as "real" men.[23]

A fundamental insight of masculinities theory, implied in its very name, is that there are various conceptions of masculinity, hence the use of the plural form.[24] While masculinity is fluid and context-dependent, the most valued and dominant form of idealized masculinity is what theorists term "hegemonic masculinity," defined as "the configuration of gender practice which embodies the currently accepted answer to the problem of the legitimacy of patriarchy, which guarantees . . . the dominant position of men and the subordination of women."[25] The elusive concept of hegemonic masculinity in Western cultures is characterized by such core qualities as whiteness, heterosexuality, rationality, aggression, individualism, and middle-class status, and by normative expectations such as occupational achievements, familial patriarchy, and subordination of others.[26]

Sitting at the top of the masculinities hierarchy as the mainstream formation of ultimate manhood, hegemonic masculinity is an ideal never fully attained. It demands "constant proof of one's manhood; it is a status never achieved, but one constantly to be established and to be tested."[27] Many men, therefore, though powerful as a group, feel powerless as individuals,

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20. *See generally* R.W. Connell et al., *Introduction* to HANDBOOK OF STUDIES ON MEN & MASCULINITIES 1 (Michael S. Kimmel et al. eds., 2005); Jeff Hearn & David H.J. Morgan, *Men, Masculinities and Social Theory*, *in* MEN, MASCULINITIES AND SOCIAL THEORY 1 (Jeff Hearn & David H.J. Morgan eds., 1990); MASCULINITIES AND THE LAW: A MULTIDIMENSIONAL APPROACH (Frank Rudy Cooper & Ann C. McGinley eds., 2012); MASCULINITY STUDIES AND FEMINIST THEORY: NEW DIRECTIONS (Judith Kegan Gardiner ed., 2002); THEORIZING MASCULINITIES (Harry Brod & Michael Kaufman eds., 1994); Angela P. Harris, *Gender, Violence, Race, and Criminal Justice*, 52 STAN. L. REV. 777, 781-88 (2000).

21. Ann C. McGinley, *Introduction: Men, Masculinities, and Law: A Symposium on Multidimensional Masculinities Theory*, 13 NEV. L.J. 315, 318 (2013).

22. MICHAEL S. KIMMEL, THE GENDERED SOCIETY 5-9 (2d ed. 2004).

23. For a comprehensive survey and critique of the developments of masculinities scholarship, see generally Collier, *supra* note 8.

24. Dowd, *Masculinities*, *supra* note 1, at 208-10.

25. CONNELL, *supra* note 14, at 77; *see also* R.W. Connell & James W. Messerschmidt, *Hegemonic Masculinity: Rethinking the Concept*, 19 GENDER & SOC'Y 829 (2005).

26. ROB GILBERT & PAM GILBERT, MASCULINITY GOES TO SCHOOL 48 (1998); MICHAEL S. KIMMEL, THE GENDER OF DESIRE: ESSAYS ON MALE SEXUALITY 30 (2005); Dafna Lemish & Irit Lahav, *Much Ado About Nothing? Masculinities in Israeli Advertising*, 4 FEMINIST MEDIA STUD. 147, 147-48 (2004).

27. Nancy E. Dowd, *Asking the Man Question: Masculinities Analysis and Feminist Theory*, 33 HARV. J.L. & GENDER 415, 421 (2010).

ceaselessly required to prove their manhood to others.[28] Varying degrees of success in proving hegemonic masculinity generate a hierarchy among men who are stuck in a state of ongoing intra-group contests and daily evaluation.[29] In this framing, hegemonic masculinity subordinates both women and non-hegemonically masculine men by stigmatizing their manifestations of personhood as inferior to "real" manhood.[30]

Male failure to conform to the ideal of hegemonic masculinity has given rise to alternative, subordinated, and subversive masculinities, often along the lines of race, ethnicity, class, and sexual orientation, which compete with and resist hegemonic masculinity.[31] The process of redefining hegemonic masculinity undertaken by men from non-dominant groups may take the form of alternative ideologies or "hyper-masculine" gender performances such as demonstrations of sexuality and power that seek to overthrow otherwise dominant males.[32]

Feminist legal theorists have recently deciphered the potential of masculinities theory to expose the gendered nature of legal constructs, all with the aim of understanding the impetus behind harmful male behavior and ultimately achieving gender equality.[33] Since the gender story of women is necessarily woven together with that of men, masculinities theory complements theories of feminism.[34] Understanding the inequality problem from the perspective of *both* genders will therefore reinvigorate feminism's own efforts to break down gender barriers. For example, while some feminists criticize women for "gatekeeping," that is, retaining power within the household by limiting fatherly childcare,[35] masculinities theory helps shift the focus by asking why men refrain from parenting in the first place.

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28. Frank Rudy Cooper, *Masculinities, Post-Racialism and the Gates Controversy: The False Equivalence Between Officer and Civilian*, 11 NEV. L.J. 1, 18 (2010) (describing masculinity as a "fundamentally anxious" endeavor); Cunningham-Parmeter, *supra* note 5, at 273; McGinley, *supra* note 21, at 317; *see* Connell & Messerschmidt, *supra* note 25, at 846 (stating that the hierarchy of masculinities is a fundamental feature of masculinities).

29. Cunningham-Parmeter, *supra* note 5, at 273-74; Harris, *supra* note 20, at 782-83; McGinley, *supra* note 21, at 316-17.

30. *See* David S. Cohen, *Keeping Men "Men" and Women Down: Sex Segregation, Anti-Essentialism, and Masculinity*, 33 HARV. J.L. & GENDER 509, 523 (2010) (explaining how hegemonic masculinity exerts pressure on men to conform to a certain masculine ideal).

31. Dowd, *Masculinities*, *supra* note 1, at 210; *see also* Dean Lusher & Garry Robins, *Hegemonic and Other Masculinities in Local Social Contexts*, 11 MEN & MASCULINITIES 387, 411 (2009) (discussing how hegemonic, complicit, subordinate, and marginalized masculinities interact and relate to one another in men's everyday lives in particular social contexts).

32. Cunningham-Parmeter, *supra* note 5, at 273; Harris, *supra* note 20, at 792-93; Lusher & Robins, *supra* note 31, at 403-04; Ann C. McGinley, *Erasing Boundaries: Masculinities, Sexual Minorities, and Employment Discrimination*, 43 U. MICH. J.L. REFORM 713, 722-23 (2010) (explaining that subordinated masculinities frequently constitute a more forceful form of masculinity).

33. Ann C. McGinley, *Work, Caregiving, and Masculinities*, 34 SEATTLE U.L. REV. 703, 706 (2011). *See generally* EXPLORING MASCULINITIES: FEMINIST LEGAL THEORY REFLECTIONS (Martha Fineman & M.O. Thomson eds., 2013).

34. Fineman, *supra* note 2, at 623.

35. Naomi Cahn, *The Power of Caretaking*, 12 YALE J.L. & FEMINISM 177, 204-06 (2000).

Asking the "man question" by examining the gender divide from the male point of view has indeed proved instrumental to an understanding of the negative effects of hegemonic masculinity on men themselves.[36] One of the heaviest tolls men pay under the unequal gender order is the stunted development of their emotional lives and the subsequent difficulties they experience with intimate relationships.[37] The family setting is a classic instance where men's privilege as the dominant gender group actually disempowers them as individuals; for example, men "not only have the right to perform as ideal workers," but are also duty-bound to do so, their caregiving responsibilities notwithstanding.[38]

In the ongoing scholarly project of imagining affirmative and egalitarian masculine identity, much of masculinities analysis has exposed this deeply negative, constricting definition of manhood. For our purposes, masculinities theory has identified at least two constitutive characteristics of hegemonic masculinity that cut against the vision of men as involved, nurturing fathers and in fact preclude caring relationships between fathers and their children.

The first barrier to engaged fatherhood is the breadwinning norm of manhood that defines a man's identity primarily by his performance in the workplace. Economic provision *is* the male form of caregiving.[39] The breadwinner privilege takes a heavy toll on men, forcing them to conceptualize wage work as definitive at the expense of their emotional lives and connection to their children.[40] Workplace norms release men from engaging in nurturing roles while chaining them to the demanding lifestyle of the market.[41]

The second barrier to father care is masculinity's foundational command to avoid all that is associated with women, femininity, and homosexuality.[42] Most gender theorists recognize that the dominant premise of masculinity requires men to "make it clear—eternally, compulsively, decidedly—that they are not 'like' women."[43] In this scheme, nurturing is a quintessential transgression of

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36. Dowd, *supra* note 27, at 419-20 (relying on the teaching of Mari J. Matsuda, *Beside My Sister, Facing the Enemy: Legal Theory Out of Coalition*, 43 STAN. L. REV. 1183, 1189-90 (1993)); Dowd, *Masculinities*, *supra* note 1, at 204-06 (detailing how asking the "man question" serves feminist theory).

37. Dowd, *Masculinities*, *supra* note 1, at 230.

38. JOAN C. WILLIAMS, RESHAPING THE WORK-FAMILY DEBATE: WHY MEN AND CLASS MATTER 32 (2010); Cunningham-Parmeter, *supra* note 5, at 296.

39. Jessie Bernard, *The Good Provider Role: Its Rise and Fall*, 36 AM. PSYCHOLOGIST 1, 3-4 (1981); Nancy E. Dowd, *Fatherhood and Equality: Reconfiguring Masculinities*, 45 SUFFOLK U.L. REV. 1047, 1058 (2012).

40. Dowd, *supra* note 39, at 1061 ("For fathers, care is more typically constructed as voluntary and optional, rather than integral to being a man.").

41. *See, e.g.*, WILLIAMS, *supra* note 38, at Ch. 1-2 (stating that the ideal worker is an unencumbered male norm that confines men to the role of the breadwinner).

42. KENNETH L. KARST, LAW'S PROMISE, LAW'S EXPRESSION: VISIONS OF POWER IN THE POLITICS OF RACE, GENDER, AND RELIGION 32 (1993) ("[O]ne categorical imperative outranks all the others: Don't be a girl."); Dowd, *supra* note 27, at 418 ("The two most common pieces defining masculinity are, at all costs, to not be like a woman and not be gay.").

43. Michael S. Kimmel, *Introduction* to THE GENDERED SOCIETY READER 1, 4 (Michael S. Kimmel & Amy Aronson eds., 3d ed. 2008).

manhood par excellence; it is a gross violation of the "fundamental command of what it means to be a man."[44] Engaged fatherhood is deemed to strip men of their manliness and make them into soft, vulnerable, and weak creatures—that is to say, women.[45] Thus, even men who desire to function as social fathers may dread that "engaging in the nurture of children might even be viewed as gender betrayal and be deemed unmanly."[46]

This risk of gender role nonconformity is particularly acute in the Israeli context. In order to understand the foundational importance of hegemonic masculinity in Israeli male identity, one must explore the fundamentals of the Zionist nation-building project and the ideological transformation of "Jews" into "Israelis."

B. The Jewish Male and the Israeli Archetype of Hyper-Masculinity

1. The Zionist Revolution as the Masculinity Revolution

Scholars of Zionism and gender have exposed Zionism as a mirror image of anti-Semitism and as a reaction to the eruption of modern European stereotypes of the "exilic" or "Ghetto" Jew as effeminate, dependent, and homosexual.[47] Indeed, one of the few common denominators shared by all Zionist strands, from the far right to the extreme left, has been the internalization—and renunciation—of Jewish men's "crippled" masculinity.[48]

Those anti-Semitic perceptions conceptualized Jews as an effeminate race and Jewish men as a "third sex,"[49] perceptions manifested in various ways. For example, circumcision was a hallmark of a feminizing Jewish practice, both because it was a cause of bleeding (evoking female menstruation) and because

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44. Dowd, *supra* note 39, at 1063, 1075 ("The relationship of masculinity to care is to reject care because of its connection with femininity."); *see also* JOHN R. GILLIS, A WORLD OF THEIR OWN MAKING: MYTH, RITUAL, AND THE QUEST FOR FAMILY VALUES 193 (1996) ("Too intimate a relationship with one's children had become unmanly, likely to call into question not only a fellow's masculinity but also his maturity.").

45. John M. Kang, *The Burdens of Manliness*, 33 HARV. J.L. & GENDER 477, 486-88 (2010); *see also* DOWD, THE MAN QUESTION, *supra* note 1, at 105; NANCY E. DOWD, REDEFINING FATHERHOOD 186-88 (2000); Cunningham-Parmeter, *supra* note 5, at 275. Some researchers have attempted to substantiate this perception with scientific force, claiming that testosterone decreases when fathers nurture their children and warning that father care may decrease virility. For an analysis of the study, see Nancy E. Dowd, *Sperm, Testosterone, Masculinities and Fatherhood*, 13 NEV. L.J. 438, 438 (2013).

46. Dowd, *supra* note 39, at 1058.

47. *See, e.g.*, DANIEL BOYARIN, UNHEROIC CONDUCT: THE RISE OF HETEROSEXUALITY AND THE INVENTION OF THE JEWISH MAN (1997); GEORGE L. MOSSE, THE IMAGE OF MAN: THE CREATION OF MODERN MASCULINITY 70 (1996); Rina Rakam-Peled, *Zionism—A Mirror Image of Anti-Semitism: On the Relationship Between Zionism and Anti-Semitism in Second Reich Germany*, *in* GERMAN ANTISEMITISM 133 (Jacob Borut & Oded Heilbronner eds., 2000) (in Hebrew).

48. Rakam-Peled, *supra* note 47; Zvi Haim Triger, *Between Zionism and Judaism: Family Law and the Intersection of Anti-semitism, Misogyny, and Homophobia* 79, 147 (2004) (unpublished J.S.D. dissertation, NYU) (on file with author) (in Hebrew).

49. BOYARIN, *supra* note 47, at 210.

it damaged the penis and distorted one's masculinity. Circumcision, in other words, was an act that "cripples a male by turning him into a Jew."[50] In fact, the most feminine organ of all, the clitoris, was itself called "the Jew," with female masturbation termed "playing with the Jew."[51]

Another source of Jews' feminization was the importance of the family in Jewish life, an institution "feminine and maternal in its origin, [with] no relation to the State or to society."[52] The prototypical Jewish man in the Eastern European Shtetl was economically supported by his robust, energetic, and self-sufficient wife.[53] It was a family structure "saturated with tensions between men and women, male dignity and emasculation, subversive female independence and male dependence."[54]

For influential visionaries of the Jewish State,[55] this shameful erosion of masculinity was the cause of all social evil; even the Holocaust—the very thing the Jewish State was established to forever prevent—was blamed on the "submissive nature" of the "passive" exilic Jew.[56] In this reading, Zionism was a men's liberation movement, freeing the Jewish man from exilic femininity.[57] The Zionist solution to the "Jewish problem" was to socially engineer the new Israeli Jew to reject all femininity, negate homosexuality, and resolve the "emasculating" attributes of Jews by regaining manliness and restoring gender borders.[58] The identity of Israeli natives—the "New Jews" of the Zionist revolution—was thus constructed as anything the exilic Jew was not: a fighter and a conqueror, physically competent, courageous and

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50. *Id.* at 235.

51. Libman Offaim, *supra* note 9, at 367.

52. Triger, *supra* note 48, at 108-09 (quoting OTTO WEININGER, SEX & CHARACTER 310-11 (1975)).

53. BOYARIN, *supra* note 47, at 211.

54. Triger, *supra* note 48, at 167.

55. The relationship between Zionism and masculinity and the idea that Zionism is a "recovery of manhood type of nationalistic movement" is a well-developed theme in Zionist historiography and among scholars of Zionism and gender. Triger, *supra* note 48, at 183. As Triger aptly put it, "the Zionist movement shared [Otto] Weininger's views concerning the effeminate nature of the Jewish man. The negations of the exile and of the 'exilic Jews' were core concepts of various Zionist movements, from the right end of the spectrum to the most leftist end of it. Examples for the internalization of these stereotypes are countless. Among them . . . are Herzl's fiction, drama, and non-fiction writing; Max Nordau; Arthur Rupin; A. D. Gordon; Franz Oppenheimer, and many others." *Id.* at 219. *See also* PAULA E. HYMAN, GENDER AND ASSIMILATION IN MODERN JEWISH HISTORY: THE ROLES AND REPRESENTATION OF WOMEN 142 (1995) ("in seeking to create the New Jew, they [the Zionist leaders] also rejected the modern West's equation of Jewishness with femininity, for the New Jew was clearly and unabashedly a masculine creature."); Max Nordau, *Muskeljudentum* (Muscular Jewry), *in* ZIONISTICHE SCHRIFTEN 379, 380 (1909) (in German).

56. *See* Assaf Likhovski, *The Invention of "Hebrew Law" in Mandatory Palestine*, 46 AM. J. COMP. L. 339 (1998); Erella Shadmi, *Gendering and Racializing Israeli Jewish Ashkenazi Whiteness*, 26 WOMEN'S STUD. INT. F. 205, 208, 213 (2003).

57. Orit Kamir, *Zionism, Masculinity and Feminism: Can They Co-Exist?*, IYUNIM BITKUMAT ISRAEL 443, 445-54 (2011) (in Hebrew).

58. MOSSE, *supra* note 47, at 153 (explaining that for both Jews and homosexuals "appearing and acting manly was considered an entrance ticket into society"); Rakam-Peled, *supra* note 47, at 133 (explaining that Zionism was "the inverse image of anti-Semitism").

aggressive, virile and unemotional, masculine in appearance and psychology.[59] The New Jew was to become "a superhuman," one socially engineered to respond to the inferior image of the old Jew by engaging in hyper-masculine performances that would take the Zionism's New Jew from "zero to a hero."[60] In short, the hegemonic masculinity created in Israel by the Zionist revolution is *hyper*-masculinity.

Meanwhile, adapting Jewish gender norms to those of the Christian West complementarily relegated the New Jewish woman, together with everything encoded as feminine, to the home.[61] Caricatured in anti-Semitic Europe as manly, Jewish women had been depicted as worldly, enterprising, and active; women who both supported and battered their domesticated, defenseless husbands.[62] The perceived dominance of Jewish women only intensified the demeaning passivity of Jewish men.[63] Because of all these stereotypes, female subordination was an integral step in engineering the new hyper-masculine Israeli Man.[64] As scholars have widely recognized, "the Zionist revolution . . . was targeted mainly at the Jewish man . . . . There is no attempt in these texts to present the pioneering project as entailing gender equality or women's emancipation."[65] Rather, "[t]he woman's image in these texts was opposed to the male pioneer . . . . Through her feminine properties, which were exilic in their nature, the woman reinforced the male, non-exilic nature of the man pioneer."[66]

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59. YAEL S. FELDMAN, NO ROOM OF THEIR OWN: GENDER AND NATION IN ISRAELI WOMEN'S FICTION 190 (1999) (noting the "familiar Zionist dogma, structuring the image of a New Hebrew Man around the dichotomy of a strong, liberated, healthy, "normal" man . . . vis-à-vis weak, cowardly, dependent diaspora Jew"); PAULA E. HYMAN, GENDER AND ASSIMILATION IN MODERN JEWISH HISTORY: THE ROLES AND REPRESENTATION OF WOMEN 142 (1995) ("in seeking to create the New Jew, [the Zionists] also rejected the modern West's equation of Jewishness with femininity, for the New Jew was clearly and unabashedly a masculine creature"); ZEEV STERNHELL, THE FOUNDING MYTHS OF ISRAEL: NATIONALISM, SOCIALISM, AND THE MAKING OF THE JEWISH STATE, at xii (1998) ("The 'new Jew' was a fighter and a conqueror who won the land thought hard work, boundless self-sacrifice, and the force of arms"); Shadmi, *supra* note 56, at 213; Triger, *supra* note 48, at 148("the sole criterion for being a Sabra was one's masculinity"). *See generally* OZ ALMOG, THE SABRA: THE CREATION OF THE NEW JEW (2000).

60. Tamar Mayer "*From Zero to Hero: Masculinity in Jewish Nationalism*," *in* ISRAELI WOMEN'S STUDIES: A READER 97, 101 (Ester Fuchs ed., 2005).

61. Triger, *supra* note 48, at 158, 162; HYMAN, *supra* note 59, at 146. *See also* Chana Livnat, *The Image of the Pioneer Woman in Hebrew Children's Literature of the 1930s*, 34 CRITICISM & INTERPRETATION 147, 148 (2000) (in Hebrew); Shadmi *supra* note 56, at 213 (noting that the aggressive male culture "blocked all avenues to developing an autonomous women's identity").

62. Orit Kamir, *Be a Jewish Woman at Home and (a Small) Israeli Man Outdoors: The Sources of the Deep Split in the Identity of Jewish Israeli Women*, *in* JEWISH ISRAELI IDENTITIES 325, 335 (Aviad Hakohen & Asher Maoz eds., 2014) (in Hebrew).

63. *Id.* at 336.

64. Rachel Elboim-Dror, *The Ideal Zionist Woman*, *in* WILL YOU LISTEN TO MY VOICE? REPRESENTATIONS OF WOMEN IN ISRAELI CULTURE 95, 95 (Yael Azmon ed., 2001) (in Hebrew) (describing how the Zionist nation-building project was highly gendered, assigning the status of the ideal Zionist woman to who is a wife and mother); Kamir, *supra* note 62, at 339, 341; Kamir, *supra* note 57, at 457.

65. Livnat, *supra* note 61, at 148. The English translation is based on Triger, *supra* note 48, at 161.

66. Livnat, *supra* note 61, at 148.

2. Israeli Law in the Service of the Zionist-Masculine Project

Law has played an important role in the process. A wide array of legal regulations in both the public and private spheres reinforces Israel's brand of hegemonic masculinity.[67] For example, judicial application of the breach of contract to marry, characterized by historical hostility towards male plaintiffs, speaks volumes about the way law views men as impervious to emotional pain.[68] Similarly, the physical harms suffered by men are also diminished; little legal attention is paid to the spousal abuse of men or to male victims of rape. The social perception is still fixated upon the incorrect assumption that marital violence victimizes only women, while findings to the contrary are largely ignored,[69] causing Israeli sociologists to term men the "mute gender."[70] Further, Israel remains one of a handful of Western countries still resisting the possibility that men can be raped.[71] Such willful ignorance serves to cultivate the rigid image of men as invulnerable and tough, insisting on emotional stoicism as a bedrock principle of manhood.[72]

The Israeli Defense Forces (IDF) is another powerful institution contributing to the construction of Israeli hegemonic masculinity.[73] Military service, praising physical strength and emotional stoicism, has become a major rite of passage into normative Israeli masculinity.[74] Israeli Jewish men are also regularly obliged to perform annual reserve duty; civilians have in fact been

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67. To be sure, rather than being a calculated effort to create a legally reinforced hyper-masculinity, these laws were an outgrowth or manifestation of the ideal of hyper-masculinity at work.

68. Ofer Grosskopf & Sela Halbi, *Breach of Promise of Marriage—from the "Male Seduction" model to the "Heart-broken" model*, *in* TRIALS OF LOVE 107, 117 (O. Ben Neftali & H. Naveh, Ramot eds., 2005) (in Hebrew).

69. Sara Ben-David, *Feminization of Domestic Violence*, 6 ISRAELI SOC'Y OF CRIMINOLOGY NEWSLETTER 3, 3-4 (2012) (in Hebrew), http://criminology.org.il/wp-content/uploads/%D7%A7%D7%A8%D7%99%D7%9E%D7%95%D7%91%D7%9C%D7%95%D7%923.pdf.

70. Nehami Baum, *The Mute Gender: Literature Review on Social Work Attitude to Men as Clients*, 26 SOC'Y & WELFARE 219, 229 (2006) (in Hebrew) (finding that welfare services in Israel and elsewhere are blind to the suffering of men, who are perceived as rational, independent, and competent).

71. *See* Section 345 of Israel's Penal Code, 1977. In 2014, a bill addressing sexual harassment was written in the feminine form, and in the explanatory remarks the bill stated that it chose the unusual feminine form in order to emphasize that sexual harassment is a female phenomenon.

72. *See* Ran Yakir, *Boys Victimized by Sexual Assault: Personal and Social Implications*, *in* A REPORT ON SEXUAL ASSAULT 29-31 (2005), http://www.1202.org.il/download/files/hebrew_2182.pdf (in Hebrew) (suggesting that Israeli society is oblivious to the reality that one in seven men is a victim of sexual assault and that the illegitimacy of male assault discourse is a product of the macho male identity that expects men to be strong providers, resolvers of conflict, stoic, heterosexual, and "owners" of their wives); Michael S. Kimmel, *Issues for Men in the 1990s*, 46 U. MIAMI L. REV. 671, 674 (1992) ("Real men show no emotions, and are thus emotionally reliable by being emotionally inexpressive.").

73. Orna Sasson-Levy, *Constructing Identities at the Margins: Masculinities and Citizenship in the Israeli Army*, 43 SOC. Q. 357, 358, 360 (2002) [hereinafter: Sasson-Levy, *Construing Identities at the Margins*]; Orna Sasson-Levy, *Military, Masculinity, and Citizenship: Tensions and Contradictions in the Experience of Blue-collar Soldiers*, 10 IDENTITIES: GLOBAL STUD. IN CULTURE AND POWER 319, 340 (2003) ("the military is the main signifier of both citizenship and masculinity in Israel").

74. Uta Klein, *Our Best Boys: The Gendered Nature of Civil-Military Relations in Israel*, *in* 2 MEN AND MASCULINITIES 47, 49, 56 (1999).

called "a soldier on eleven months' annual leave."[75] Interestingly enough, the IDF has been one of the most liberal and gay-friendly armies in the world, attempting to legitimatize Jewish "gayness" by creating images of macho, gay soldiers.[76] Arab Muslims are excluded, however, and cannot even volunteer to serve, helping to create marginalized and subordinated masculinities along national ethnic lines.[77]

Contributing to the construct of men as militaristic is the gender-differentiation of military regulations—notwithstanding that Israel is the only country on earth that calls its women to compulsory military service.[78] The varying duration of service, the scope of annual reserve duty, terms for exemption from service, and the near-total exclusion of women from combat all construct an exclusively male image of fighters, defenders, and combatants.[79] These gendered images in turn intensify the inherent physical hierarchy of the male and female bodies.[80] The military largely relegates female participants to traditional service-giving or decorative positions,[81] entrenching the stereotype of women as primarily caretakers.[82] Tellingly, the law specifically excludes mothers and married women—but not fathers or married men—from military service.[83]

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75. *Id.* at 58 (quoting former chief of staff General Yigael Yadin).

76. Yaron Peleg, *Heroic Conduct: Homoeroticism and the Creation of Modern, Jewish Masculinities*, 13 JEWISH SOC. STUD. 31, 53 (2006).

77. Klein, *supra* note 4, at 52. *See also* Daniel Monterescu, *Stranger Masculinities: Cultural Construction of Arab Maleness in Jaffa*, 5 ISRAELI SOC. 121 (2003).

78. Daphna Hacker, *Single and Married Women in the Law of Israel—A Feminist Perspective*, 9 FEMINIST LEG. STUD. 29, 39 (2001). *See also* Karin Carmit Yefet & Shulamit Almog, *Religionization, Exclusion and the Military: "Zero Motivation" in Gender Relations?*, 39 TEL AVIV L. REV. __ (forthcoming 2016) (in Hebrew). It should be noted, however, that while writing these lines, the Norwegian Parliament passed legislation introducing compulsory military service for males and females in Norway as well. *See* Ine Eriksen Søreide, *Conscription for All*, THE FOREIGNER (October 14, 2014), http://theforeigner.no/pages/columns/conscription-for-all/.

79. Noya Rimalt, *Women in the Sphere of Masculinity: The Double-Edged Sword of Women's Integration in the Military*, 14 DUKE J. GENDER L. & POL'Y 1097, 1101, 1113 (2007); Klein, *supra* note 77, at 48.

80. Rimalt, *supra* note 79, at 1119.

81. Triger, *supra* note 48, at 45, 48 (noting that the most common position of women in Israeli military is the "company's clerk," who is a female in charge of bringing soldiers mail, bake, and "lift morale"). This reality is appositely captured in the popular Israeli slogan: "the best [men] to [combat] piloting and the best [women] to the pilots." Pnina Lahav, *"A Jewish State ... To Be Known as The State of Israel:" Notes on Israeli Legal Historiography*, 19 LAW & HIST. REV. 387, 412 (2001).

82. Yuval Livnat, *What Kind of Feminism? Reflections on the "Galili Affair,"* 16 BAR-ILAN L. STUDIES 471, 475 (2001) (in Hebrew); Frances Raday, *The Military: Feminism and Citizenship*, 9 PLILIM: THE MULTIDISCIPLINARY J. PUB. L., SOC'Y, & CULTURE 185, 198 (2000) (in Hebrew); Sasson-Levy, *Constructing Identities at the Margins*, *supra* note 73, at 370.

83. Article 39(b) of the Security Service Act, 1953. *See also* CA 5/51 Steinberg v. Attorney General 5(2) PD 1061, 1068 [1951] (rejecting an equal protection claim and holding that the Defense Service Law does not discriminate against men given the "special role of the married women in her household."); Hacker, *supra* note 78, at 39; Sasson-Levy, *Constructing Identities at the Margins*, *supra* note 73, at 369. Since Palestinian women do not serve in the army (for ideological reasons connected with their national identity), Israel's policy-makers feared this would give them undue advantage over Jewish women in the competition for procreation. *See* Hacker, *supra* note 78, at 40 n.9. *See also* Noya

3. Family Law as the Man's Law

The central effort in the restoration of Jewish masculinity has arguably been the establishment of a patriarchal family structure, a male privilege that even European Gentile men have never enjoyed. As part of the "cult of masculinity" underlying secularist Zionist ideology, the Israeli legislature adopted patriarchal *religious* law in the spheres of marriage and divorce because it conformed to their ideas of hierarchical gender relations.[84] As Zvi Triger cogently shows, the legislative debates used religious sentiments as a pretext to allow the state to subordinate women while maintaining the illusion of gender equality as a key component of the State's founding ethos.[85]

With these religious underpinnings, the law established marriage as a contract granting men property interests in their wives; indeed, the Hebrew word for "husband" is "owner." The Hebrew word for "wife," however, is "woman," suggesting that a woman's entire existence is predicated upon marriage.[86] Israeli men further enjoy a veto power over divorce, which they often abuse as a bargaining chip to extort property concessions and evade financial obligations.[87] Even wives who establish the entire cluster of fault grounds but lack their husbands' consent to divorce are destined to remain shackled in marital bonds for as long as their husbands may desire.[88] The law also goes so far as to grant men the sole gendered privilege to exercise bigamy under certain circumstances.[89] The adoption of a family law that most potently subordinates women's rights to patriarchal values has had a major effect on the entire design of the legal system. To begin, when the advanced Women's Equal Rights Law was enacted in the country's formative years, it specifically excluded the laws of marriage and divorce from its coverage,[90] prompting scholars to re-name it the "Safeguarding Men's Rights Law."[91] Even more astoundingly, the quest to cure the crippled masculinity of the Jewish man has led to the very crippling of the Constitution itself—its limited application. In

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Rimalt, *When a Feminist Struggle Becomes a Symbol of the Agenda as a Whole: the Example of Women in the Military*, 6 NASHIM 148, 155 (2003).

84. Triger, *supra* note 48, at 2 (providing a critical narrative of the evolution of Israeli family law and suggesting that "anti-Semitism, misogyny and homophobia played a crucial role in the adoption of the current discriminatory marriage and divorce regime in Israel"), 191 ("Zionism's acceptance of Jewish law was a result of rejection of what was perceived as 'feminine' or 'effeminate,' and it originated in its deep commitment to and endorsement of patriarchal values").

85. Triger, *supra* note 48, at 183. *See also* Kamir, *supra* note 62, at 340.

86. Triger, *supra* note 48, at 23.

87. *See* Karin Carmit Yefet, *Unchaining the Agunot: Enlisting the Israeli Constitution in the Service of Women's Marital Freedom*, 20 YALE J.L. & FEMINISM 441, 447 (2009).

88. *Id.*

89. *See* Penal Law 5737-1977, Chapter Eight: Offenses against the Political and Social Order, Article Eight: Polygamy, No. 180: Marriage by permission under other law, 62.

90. 5711-1951, 5 LSI 171 (1950-51).

91. Pnina Lahav, *"When the Palliative Only Damages:" The Debate Over the Women's Equal Rights Law*, 46/47 ZEMANIM: J. HIST. 149, 159 (Winter 1994) (in Hebrew); Triger, *supra* note 48, at 37.

order to protect this regime from invalidation, the 1992 Constitution contains a Savings Clause that immunized *all* prior legislation against judicial review.[92] In this way, the desire to ingrain the ideology of the New Jew as unabashedly masculine undermined the decisive role the Constitution could have played in the Israeli legal universe.

The system's discriminatory meta-principle fundamentally affects relationships between Israeli men and women; the internalization of inferiority and disempowerment pervades women's entire self-image.[93] Moreover, since the family is the first and most powerful moral school in a child's socialization, these discriminatory personal status laws effectively ensure the entrenchment of the gendered structure in the fabric of Israeli society.[94] But by giving men so much power over women, the newly formed state was able to shatter the "embarrassing" mannish image of the Jewish woman, which so effectively ridiculed and diminished the troubled masculinity of the Jewish man.

I contend that the new archetype of what I term "Jewish hyper-masculinity" has shaped not only intimate adult relations, but also the laws regulating the parent-child relationship. If the "old Jew" considered active fatherhood a central component of his public identity,[95] the New Jew religiously adheres to a strict gender division of family labor. In what follows, I sketch the contours of the father figure as drawn in various areas of law. I argue that rather than striving to promote the egalitarian project of a different conception of masculinity, Israeli law eschews male caregiving to construe fatherhood as exclusively bio-economic.

II. FATHERHOOD IN THE LAW-MAKING OF BABY-MAKING

This Part begins the project of answering the largely ignored "man question," that is, how the law constrains male gender roles and how those constraints inhibit the father-child relationship.

Israeli law conceptualizes the father figure with a biological model of fatherhood motivated by two ideological philosophies. First, it emphasizes virility and combats the horror of failed sperm, failed intercourse, and failed masculinity. As anthropologist David Gilmore has identified, a middle-eastern man seeking to validate his masculinity is required to breed.[96] So fundamental

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92. Yefet, *supra* note 87, at 456.

93. Ruth Halperin-Kaddari, *Marriage and Divorce Law and Gender Construction*, *in* TO BE A JEWISH WOMAN: PROCEEDINGS OF THE FIRST INTERNATIONAL CONFERENCE: WOMAN AND HER JUDAISM 155, 161-62 (2001) (in Hebrew).

94. SUSAN MOLLER OKIN, JUSTICE, GENDER, AND THE FAMILY 4, 21 (1989).

95. CHAIM I. WAXMAN, THE JEWISH FATHER: PAST AND PRESENT 59, 62, 69-70 (1984).

96. DAVID D. GILMORE, MANHOOD IN THE MAKING: CULTURAL CONCEPTS OF MASCULINITY 222-23 (1990).

is this imperative that the failure to beget children, even if the result of a woman's infertility, is a per se compromise of masculinity.[97]

Second, the biological model rejects the social model of relatedness that focuses on the man's actual relationship with his child, removing caretaking responsibilities—associated with womanhood—from the father's role. The attempt to sustain the singular significance of "natural" or biological bonds as a core definition of fatherhood in Israel is reinforced by various legal schemes.

The Law of Reproductive Technologies: Israel's obsession with hyper-tech reproduction befits a society with rigid ideas about the "right" way to reproduce.[98] New reproductive technologies have been made accessible and generously funded on a scale unknown anywhere else in the world;[99] there are more fertility clinics per capita in Israel than in any other country,[100] and Israel boasts a world record for the greatest number of fertility treatments per capita.[101] Israel's physicians, couples, and policy-makers have consistently prioritized treatments aimed at generating biologically related offspring, even at the cost of major health risks and low success rates.[102] The distance to which Israeli men go to achieve biological parenthood epitomizes the importance of genetic ties to the definition of manhood in "macho" Jewish Israeli culture.[103] Patrilineal relatedness is so important that medical professionals go to extreme lengths to extract sperm even when a lab test reveals that there is either no sperm or no functional sperm.[104] Israeli men in turn are more than willing to "put their genitals on the operating table," sometimes undergoing up to three operations, even though chances of success plummet to almost zero once the

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97. Libman Offaim, *supra* note 9, at 356.

98. *Id. See also* Daphna Birenbaum-Carmeli & Yoram S. Carmeli, *Adoption and Assisted Reproduction Technologies: A Comparative Reading of Israeli Policies*, *in* KIN, GENE, COMMUNITY: REPRODUCTIVE TECHNOLOGIES AMONG JEWISH ISRAELIS 127, 142 (Daphna Birenbaum-Carmeli & Yoram S. Carmeli eds., 2010) ("[E]xtensive ART services represent the state's attempt to hold on to the natural family basis."); Helene Goldberg, *The Man in the Sperm: Kinship and Fatherhood in Light of Male Infertility in Israel*, *in* KIN, GENE, COMMUNITY, *supra*, at 84, 98 ("[R]ather than renegotiating and changing the ideas and the importance of the natural family, genetic fatherhood, and genetic descent, these notions of relatedness are emphasized, accentuated, and reinforced by the use of ARTs to overcome male infertility.").

99. Yael Hashiloni-Dolev, *Between Mothers, Fetuses and Society: Reproductive Genetics in the Israeli-Jewish Context*, NASHIM: J. JEWISH WOMEN'S STUD. & GENDER ISSUES 129, 130-31 (Fall 2006).

100. Daniel Sperling, *Commanding the "Be Fruitful and Multiply" Directive: Reproductive Ethics, Law, and Policy in Israel*, 19 CAMBRIDGE Q. HEALTHCARE ETHICS 363, 363 (2010); Yael Hashiloni-Dolev, *Genetic Counseling for Sex Chromosome Anomalies (SCAs) in Israel and Germany: Assessing Medical Risks According to the Importance of Fertility in Two Cultures*, 20 MED. ANTHROPOLOGY Q. 469, 480 (2006) (observing also that "reproductive laws and fertility services reflect the fact that parenthood is highly valued" in Israel).

101. Larissa Remennick, *Between Reproductive Citizenship and Consumerism: Attitudes Towards Assisted Reproductive Technologies Among Jewish and Arab Israeli Women*, *in* KIN, GENE, COMMUNITY, *supra* note 98, at 318, 319 ("The prevalence of infertility treatments in Israel is the highest in the world.").

102. Daphna Birenbaum-Carmeli & Yoram S. Carmeli, *Reproductive Technologies Among Jewish Israelites: Setting the Ground*, *in* KIN, GENE, COMMUNITY, *supra* note 98, at 1, 24.

103. *Id.* at 22.

104. Goldberg, *supra* note 98, at 90.

first operation has failed.[105] If a sperm donor is ultimately necessary, governmental directives require that doctors "mix" the intended father's sperm with that of the donor.[106]

Israel has been unprecedentedly advanced in its sperm donation policies, betraying the marginality of the father as a social figure. It is exceedingly liberal in allowing artificial conception even when the biological father can never serve the function of a social father—permitting, for example, inmates serving life without parole to father children they will never raise.[107] Indeed, the process of sperm donation by definition requires the man to give up any nurturing connection to his potential children.[108] Israel is also exceptional in allowing unrestricted access to single women and lesbian couples long before any other country showed the same progressive receptivity.[109] Further, unlike other Western countries, Israel encourages the concealment of sperm donation at all levels: the state, clinical staff, and the couple themselves; there are no official records of sperm donors and donor children.[110] This is hardly surprising in a social climate where masculinity is measured in terms of fertility and in which the inability to function as a fertile stallion would disgrace a man unable to impregnate his wife.[111]

This legal veil of secrecy surrounding sperm donation, which sacrifices children's fundamental right to trace their origins,[112] may be driven by the desire to avoid redefining fatherhood in social and relational terms. Children born of sperm donation are considered fatherless, such that a husband's consent

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105. *Id.*

106. Birenbaum-Carmeli & Carmeli, *supra* note 102, at 24.

107. Even the high profile murderer of Israel's Prime Minister is allowed access to artificial conception. *See* HCJ 2245/06 MK Neta Dovrin v. The Prison Services [2006] (unpublished opinion). All unpublished opinions cited in this article are on file with the author.

108. A sperm donor may not even be notified if his sperm has ever been used. *See* SCJ 4077/12 Plonit v. Health Department [2013] (unpublished opinion), § 21 of the judgment of Justice Amit. *See also* Ruth Zafran, *The Family in the Genetic Era—Defining Parenthood in Families Created Through Assisted Reproduction Technologies as a Test Case*, 2 DIN U' DVARIM 223, 279 (2005) (in Hebrew).

109. Writing in 2013, Dowd observed that "sperm, although available, is less accessible to lesbian couples, single women (whether lesbian or straight), and gay men." Dowd, *supra* note 39, at 447. According to Naomi Cahn, the most common use of sperm donors is by single women and lesbian couples. *See also* Birenbaum-Carmeli & Carmeli, *supra* note 98, at 129 (noting that the Israeli ART policy is an "international exception" for its inclusiveness, as fertility treatments are state funded and are available to all women regardless of family status or sexual orientations).

110. SCJ 4077/12 Plonit v. Health Department [2013] (unpublished opinion), § 41 of the judgment of Justice Rubinstein; *see also* SUSAN MARTHA KAHN, REPRODUCING JEWS: A CULTURAL ACCOUNT OF ASSISTED CONCEPTION IN ISRAEL (2000). *See generally* Yoram S. Carmeli & Daphna Birenbaum-Carmeli, *State Regulation of Donor Insemination: An Israeli Case Study*, 19 MED. & L. 839 (2000); Yoram S. Carmeli & Daphna Birenbaum-Carmeli, *Ritualizing the Natural Family: Secrecy in Israeli Donor Insemination*, 9 SCI. AS CULTURE 301 (2000); Goldberg, *supra* note 98, at 96-97.

111. Yael Yishai, *Abortion in Israel: Social Demand and Political Responses*, *in* 6 WOMEN IN ISRAEL: STUDIES OF ISRAELI SOCIETY 287, 292 (Yael Azmon & Dafna N. Izraeli eds., 1993) (in Hebrew).

112. For a thorough discussion of this right in Israeli law, see generally Ruth Zafran, *Secrets and Lies—the Right of AID Offspring to Seek Out Their Biological Fathers*, 35 MISHPATIM 519 (2005) (in Hebrew).

to his wife's impregnation by a donor is legally translated into an economic obligation, but does not confer full-fledged paternal status.[113] If such a couple separates, the most the law offers the de facto father is an exemption from child support, but not visitation rights.[114] In this way, the law fails to accept that children are connected to fathers not because of biological imprint but because of intentional, ongoing caretaking.

On the other hand, if the identity of an anonymous sperm donor is somehow discovered, then under Israeli law—unlike that of most other countries[115]—that donor will be obliged to pay child support. A paternal genetic tie always connotes monetary responsibility in the eyes of the law.[116] In the case of an egg donor, however, the law specifically denies the donor's maternity.[117] The woman who functions as the caretaker is the mother under the law, meaning that nurture can replace nature, but only for women; for Israeli men, there is nothing "natural" about choosing to be social fathers.[118]

The law accords differing treatment of sperm and egg donors in yet another important respect: for sperm donation in Israel, a man is required only to give consent.[119] Unlike egg donation, no counseling is prescribed in advance of donation, as the law does not consider "the act of being a sperm donor [as one] . . . expected to generate a sense of loss, grief, or even curiosity or desire to connect."[120] Egg donation, which until 2010 was heavily restricted,[121] requires more extensive preparation. Women must apply for approval from a special committee comprised of physicians, a social worker, a psychologist, a lawyer, and a religious official or public representative. She must be given a detailed explanation, both orally and in writing, of the procedure and its meaning, and must undergo both a medical and psychological evaluation as well. Before

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113. CA 449/79 Salame v. Salame, 34(2) PD 779, 784 [1980]. *See also* SCJ 4077/12 Plonit v. Health Department [2013] (unpublished opinion), § 37 of the judgment of Justice Rubinstein.

114. This was the case in FC (Jerusalem) 10681/98 Plonim v. Almoni, Takdin 2000(3) 244, 265-67 [2000].

115. Pinhas Shifman, *Involuntary Parenthood: Misrepresentation as to the Use of Contraceptives*, 4 INT'L J. L. & FAM. 279, 281 (1990) (stating that many countries do not view the genetic father as a legal parent); Adrienne D. Gross, *A Man's Right to Choose: Searching for Remedies in the Face of Unplanned Fatherhood*, 55 DRAKE L. REV. 1015, 1052 (2007) ("Most states have statutes that protect sperm donors from facing the obligations of parenthood by excusing the donor from all rights and interests with respect to children born as a result of the donation"; the same rule applies whether or not the donor's identity is known).

116. For pieces calling for reform of the Israeli law regarding the donor's responsibility along the California model, see an article written by Israel's former Chief Justice Meir Shamgar, *Issues in Procreation and Birth*, 50 HAPRAKLIT 353, 368-73 ("The Donor's Status") (1993) (in Hebrew); Shmuel Beniel & Moshe Ronen, FATHERS AGAINST THEIR WILLS 211 (1992) (in Hebrew).

117. Eggs Donation Act, 5770-2012, LSI 520, art. 42(3).

118. *Id.* at Art. 42(1).

119. *See* SCJ 4077/12 Plonit v. Health Department [2013] (unpublished opinion), § 14 of the judgment of Justice Amit.

120. Nancy E. Dowd, *Sperm, Testosterone, Masculinities and Fatherhood*, 13 NEV. L.J. 438, 443 (2012).

121. Bracha Reger, *Reflections: Science and the Law in Favor of the Desire to Become a Parent*, SCI. AM. ISRAEL J. (2010) (in Hebrew).

granting permission, the committee must be persuaded that the donor's consent has been given soberly, freely, and not out of familial, social, economic, or any other pressure.[122] These differences between sperm and egg donation exemplify the values Israel places on motherhood versus fatherhood.

Finally, the gendered legal treatment of gamete donation is manifested also in the post-mortem stage. Israel's legal system, preoccupied with natality, has legitimized and indeed made standard practice the retrieval of sperm from a dead body.[123] Yet it is not clear that the law sanctions the parallel practice of taking an egg from a dead woman; such a procedure is permitted only in cases where the woman expressly consented to the use of eggs after her death.[124]

This sex-based difference, I suggest, should be read as another testament to the definitional idea of fatherhood as biological and motherhood as social. In order for a man to fulfill his fatherly role, it is enough to use his genetic substance to create a child. The father himself is detached from his sperm and is "dispensable" as a social figure. For a woman, however, the hallmark of maternity is childrearing. Since motherhood is perceived as social first and foremost and only secondarily biogenetic, the law is reluctant to assume that a woman may perceive use of her eggs per se as a method of ensuring continuity. The message is clear: no normative woman would want to bring into the world children whom she could not raise. Men, on the other hand, are a different story. The normalization of the retrieval of sperm from a dead body does not reveal men's relentless desire to have children, but rather underscores the very definition of parenthood for men as biological. An extensive study on the gendered practices of sperm and egg donation suggests that men and women have internalized these legal standards. The study found that egg donors did not see themselves as mothers to the children born, but that men, in contrast, did see themselves as fathers (though without any continuing obligations as a consequence).

The Law of Adoption: The marginalization of adoption as a solution to infertility is further evidence of this underlying bias. In contrast to holding the local world record of IVF consumption, Israel is profoundly steeped with ambivalence about adoption, and correspondingly ranks extremely low in

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122. Eggs Donation Act, *supra* note 117, § 12. *See also* SCJ 4077/12 Plonit v. Health Department [2013] (unpublished opinion), § 14 of the judgment of Justice Amit.

123. Sperling, *supra* note 100, at 365; Elly Teman, *The Last Outpost of the Nuclear Family: A Cultural Critique of Israeli Surrogacy Policy*, *in* Kin, Gene, Community, *supra* note 98, at 107, 116 (2010). *See generally* Ruth Zafran, *Dying to be a Father: Legal Paternity in Cases of Posthumous Conception*, 8 Houston J. Health L. & Pol'y 47 (2008). For a recent precedential case allowing parents to use the frozen sperm of their deceased son to be fertilized by a foreign woman, notwithstanding his widow's opposition, see FC (Petah Tikva) 31344-09-13 Plonit v. State Attorney, Central District [2015] (unpublished opinion).

124. Rhona Schuz, *The Developing Right to Parenthood in Israeli Law*, *in* INT'L SURV. FAM. L. 197, 220 (2013).

adoption numbers compared to other industrialized nations.[125] State preference for biological relatedness is unabated in the Ministry of Health's recommendation to continue fertility treatment while waiting for an adopted baby,[126] thereby constructing adoption as an absolute last resort. Where adoption is allowed, considerable bureaucracy burdens the process (e.g., an extensive waiting period and a six-month post-placement probation period).[127] The striking differences between the inclusive state funding of artificial reproductive technologies and the tight eligibility criteria for applicants of domestic adoption are further evidence of the symbolic significance bestowed on biological relatedness as a constitutive element of the Israeli collectivity.

Surrogacy and the Law: Israel's surrogacy regime also exhibits the state's normative images of motherhood as social and fatherhood as biological. As part of the Israeli "cult of fertility," Israel became the first country on earth to legalize surrogate motherhood.[128] Its Embryo Carrying Agreement Act of 1996 was unanimously supported by an otherwise bitterly divided Parliament.[129] Today, while almost all countries still ban the practice entirely, among those who do allow surrogacy, Israel remains the most permissive regime.[130]

Despite this, an infertile man's road to parenthood via surrogacy is hermetically blocked. The law insists that the designated father must always provide the sperm; if he cannot be the biological father, he cannot legally be a father via surrogacy by creating a social bond with the child.[131] Clearly, allowing a man paternity founded in child-raising is foreign to Israeli social values. The opposite is true for the infertile wife, who may become a mother via surrogacy with neither a gestational nor genetic link to the child. As long as the woman is the intended caretaker, in the eyes of the law she is his legal mother.

One of the most celebrated cases in Israeli jurisprudence epitomizes the limited nature of Israeli fatherhood in the arena of surrogacy. The internationally famous case of *Nahamani* involved a dispute over the implementation of frozen embryos in a surrogate mother. In the constitutional competition between the right to be a parent and the right not to be a parent, the

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125. Birenbaum-Carmeli & Carmeli, *supra* note 98, at 132; Carmel Shalev, *Halakha and Patriarchal Motherhood—An Anatomy of the New Israeli Surrogacy Law*, 32 ISR. L. REV. 51, 53 (1998) ("Even alternative solutions such as inter-country adoption recede in the face of an unspoken imperative to realize genetic parenthood at whatever cost.").

126. Birenbaum-Carmeli & Carmeli, *supra* note 102, at 24.

127. Birenbaum-Carmeli & Carmeli, *supra* note 98, at 135-36.

128. Hashiloni-Dolev, *supra* note 100, at 480.

129. Teman, *supra* note 123, at 110. The full name of the law is: Embryo Carrying Agreements (Approval of the Agreement and Status of the Child) Law, 1996, SH n. 1577, p. 176.

130. Teman, *supra* note 123, at 108; Sperling, supra note 100, at 365 ("Israel is one of the single countries and the first in the world where surrogacy is legal"); D. Kelly Weisberg, The Birth of Surrogacy in Israel 4 (2005) (providing a legal, historical and feminist analysis of the surrogacy law).

131. Elly Teman, *The Medicalization of "Nature" in the "Artificial Body": Surrogate Motherhood in Israel*, 17 MED. ANTHROPOLOGY Q. 78, 82 (2003).

Israeli Court, as no other Court in the world,[132] ruled that a woman's "right to motherhood" outweighs a man's "right to avoid fatherhood." Consequently, the woman was allowed to have the frozen embryos implanted into a surrogate despite her ex-husband's vehement opposition.[133]

One of the main points of controversy between the majority and minority opinions can be understood as a disagreement over the role of fatherhood in a man's life. While the majority largely downplayed the significance of fatherhood, conceptualizing the status as a mere "economic burden" and men as the mere instrument to the wife's motherhood, the minority recognized that parenting is powerfully life-altering and of "supreme importance" for men, too—economically, emotionally, morally, and socially.[134] The minority even went so far as to charge the majority with gender bias, suggesting that they overvalued a woman's right to parenthood while undermining the same right of men.[135] Tellingly, when a case with similar, though gender-reversed, fact patterns reached the courts years later, the decision indeed preferred the right of the woman not to be a mother over the right of the man to be a father.[136]

The inescapable conclusion is that the state values motherhood infinitely more than it values fatherhood, and that it selectively privileges either biological or social relatedness depending on the sex of the parent. In short, the law reveres the biological component of fatherhood while undermining its most significant aspect—a social and nurturing relationship with the children.

III. LEGAL IMAGES OF FATHERHOOD: DECONSTRUCTING THE LAW OF CHILD SUPPORT AND CUSTODY

This Part explores how legal doctrines regulating child support and custody law foster masculinity norms and a separatist ideology that reify the bio-

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132. *See, e.g.*, Evans v. United Kingdom, 43 Eur. Ct. H.R. 409 (2007). *See also* Janie Chen, *The Right to Her Embryos: An Analysis of* Nahamni v. Nahamni *and Its Impact on Israeli In Vitro Fertilization Law*, 7 CARDOZO J. INT'L. & COMP. L. 325, 331 (1999) (naming Australia, Canada, England, and the United States as illustrative examples for requiring ongoing consent of both parties); Gross, *supra* note 115, at 1037-41 (providing a detailed account of American law on the issue).

133. CFH 2401/95 Nahamani v. Nahmani, 50(4) PD 661 [1996].

134. *See, e.g.*, *id.* at § 9 of Justice Strasberg-Cohen opinion.

135. *Id.* at § 3 of Chief Justice Barak opinion:

> Justice, in the context before us, means the realization of joint parenthood. There is no justice in forcing someone to be a parent against his will. . . . Justice is equality, and equality is giving a joint power of making decisions to the two parties. Let us assume, for example, that the roles were reversed, and that Daniel Nahmani was the one wanting to continue the fertilization procedure, and Ruth Nahmani was the one refusing to be the mother of their joint child. I suspect that were this the case that we were deciding, then Daniel Nahmani's application would be denied. We would say that motherhood should not be forced on a woman who does not want it; that motherhood is a relationship so intimate and natural that it should not be forced on a woman against her will; that just as a woman is entitled to make a decision with regard to the abortion of her child without her husband's consent, she is entitled to oppose the continuation of the fertilization procedure being carried out outside her body. . . .

136. FA (Jer) 228/08 Ploni v. Plonit [2010] (unpublished opinion).

economic model of fatherhood. The legal regulation of parental responsibility endorses a binary theory of gender that constrains identity, limits freedom, and perpetuates sex hierarchies. In particular, child custody law forces women to perform the work of motherhood, while child support law coerces traditional fatherhood in the classic paradigm of economic provision. Together, these legal regimes negate the value of men's involvement in childcare as they promote the ideal of breadwinner masculinity. This has led to the fortification of the "detached" or "disposable" father norm in legal discourse and social practices.

A. Gender Stereotyping in Israeli Child Support Law: Breadwinner Masculinity

Child support law has long been considered the "step child" of Western family law, traditionally receiving only sparse analytic treatment.[137] Neglecting child support law has caused this area of legal regulation to stagnate under an exceedingly constraining vision of masculinity for Israeli men.

The traditional sexual division of labor has forcefully shaped the Israeli child support system. Ever since its inception, Israel has adhered to gender-based, patriarchal religious rules envisioning men as the sole possible bearers of child support obligations.[138] Under the legalized "separate spheres" ideology, fathers are under no legal obligation to craft meaningful social relationships with their children or take a more active role in their lives. The powerful message to fathers is that they are neither needed nor wanted as a nurturing parent.[139] In this way, the law myopically contemplates an economic model of fatherhood in which the only way fathers can parent is by breadwinning. In renouncing the decidedly feminine work of caregiving, this

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137. Ellen London, *A Critique of the Strict Liability Standard for Determining Child Support in Cases of Male Victims of Sexual Assault and Statutory Rape*, 152 U. PA. L. REV. 1957, 1966 (2004).

138. Under Israel's personal status laws, the father alone is responsible for child support and must satisfy his children's "essential needs," regardless of his or the mother's economic situation. Yet once the child reaches the age of fifteen, courts tend to employ religious doctrines that allow them to impose some responsibility on mothers. *See* Yoav Mazeh, *"Child Custody": A Substantive Term or a Hollow Title?* 28 BAR-ILAN L. STUD. 207, 236-37 (2012) (in Hebrew) (noting that the patriarchal conception underlying Israeli child support law is based on the "separate spheres" tradition, in which mothers are caretakers and fathers are breadwinners; a tradition at the root of men's categorical child support obligations); Anat Herbst, *Discourse of Need: The Case of Child Support (Payment Assurance)*, 35 WOMEN'S STUD. F. 214, 216 (2012) (noting that the structure of child support payments stems from the traditional gendered family roles of religious law (the Jewish Halacha and the Muslim Sharia)).

139. As I show *infra*, Israeli law reinforces the gendered perceptions of parenthood as two different essences that entail different parental roles for mothers and fathers. *See also* Nancy E. Dowd, *Rethinking Fatherhood*, 48 FLA. L. REV. 523, 526 (1996) (describing how the law imbeds biological and economic gender divisions, essentially divorcing fatherhood from nurturing); Solangel Maldonado, *Beyond Economic Fatherhood: Encouraging Divorced Fathers to Parent*, 153 U. PA. L. REV. 921, 941 (2005) (noting how the law fails to require fathers to parent their children, effectively telling them that their presence is unimportant to their children's lives).

vision of paternal providership thus crystallizes Israel's brand of hegemonic masculinity in the law.[140]

The paradigmatic figure of the "father as provider" is so well-entrenched in Israeli law that, unlike American law,[141] it imposes child support obligations even when the father has no available income to meet them,[142] when he is denied visitations, and even when he gains sole or joint physical custody over his children.[143] This regime has catalyzed fathers deciding to forgo an active role in their children's upbringing.[144]

Keeping with these rigid gender definitions, Israeli women are hardly ever ordered to provide economically for their children, no matter how well-off the mother, how poor the father, or how involved each is in the child's

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140. *See* Cunningham-Parmeter, *supra* note 5, at 279.

141. In the United States, estimates show that only about half of non-custodial fathers are court-ordered to pay child support, and of those about fifty percent fail to do so. Israel, on the other hand, requires that divorced fathers support their children financially. Pauline I. Erera et al., *Fathering After Divorce in Israel and the U.S.*, 31 J. DIVORCE & REMARRIAGE 55, 57 (1999).

142. *See Report of the Committee for the Examination of Child Support in Israel*, MINISTRY OF JUSTICE 11 (2012), http://shared-parenting.co.il/wp-content/uploads/2013/10/%D7%93%D7%95%D7%97-%D7%95%D7%A2%D7%93%D7%AA-%D7%A9%D7%99%D7%A4%D7%9E%D7%9F.pdf [hereinafter *Shifman Report*] (pointing to the argument of men's rights organizations that high child support payments harm Israeli men and deny them "dignitary existence"). *See, e.g.*, FA 5750/03 Ohana v. Ohana [2005] (unpublished opinion) (calculating that the child support owed by a father who earns over 5000 NIS leaves him with only 825 NIS for himself); FA (Jer) 787/05 Abel v. Babel [2006] (unpublished opinion) (involving a disabled father whose entire earnings were 2000 NIS in the form of a disability stipend from Social Security who was ordered to pay 3000 NIS; when he appealed, the appellate court remarked that the amount of child support was on the lower side of the norm, and that he should be made to pay more); CA 130/83 Price v. Price 38(1) P.D. 721 [1984] (ordering a disabled person who was unable to work to sell his house and rent an apartment so that he could meet his child support obligations).

143. *See* FA (Hi) 318/05 John Doe v. Jane Doe [2006] (unpublished opinion), § 15 (instructing courts to oblige fathers in shared parenting arrangements to continue to pay child support and that there can be made a maximum of a twenty-five percent reduction in child support paid in case of sole maternal custody). In fact, judges often refused to offer the reduction benefit to fathers. *See* Ori Israel Paz, *A Father Will Not Pay Child Support in Shared Parenting*, TAKDIN-LEGAL PORTAL (Feb. 27, 2014) (in Hebrew), http://www.takdin.co.il/Pages/Article.aspx?artId=4494044 (finding that three cases have exempted fathers from child support in co-parenting arrangements). *See also* Mazeh, *supra* note 138, at 232-34 (arguing that Israeli child support law is manifestly patriarchal, reflecting an essentialist perception of the man's role as a man—that is, as breadwinner. For this reason, the law is applied in all circumstances, regardless of the father's economic situation and his contributions as caretaker, even when the mother is financially better off, and even if he shares equal (or more) joint physical custody with the mother).

144. Paz, *supra* note 143. Interestingly, Israeli doctrine bears a striking similarity to traditional American law—until the dawn of the twentieth century—except for the role-reversal: at that time in America, custody was viewed as a man's sole and absolute right. As Blackstone wrote, "[A] mother, as such, is entitled to no power, but only to reverence and respect." 1 WILLIAM BLACKSTONE, COMMENTARIES *441. *See also* Linda L. Berger, *How Imbedded Knowledge Structures Affect Judicial Decision-Making*, 18 S. CAL. INTERDISC. L.J. 259, 281 ("Throughout U.S. history, marital fathers won custody of their children when divorced or separated from their wives."). In the rare cases that mothers did receive custody of the children (where "the father was grossly unfit"), they were entitled to no support whatsoever from the father. Jerry McCant, *The Cultural Contradiction of Fathers as Nonparents*, 21 FAM. L.Q. 127, 135 (1987); Jane C. Murphy, *Legal Images of Motherhood: Conflicting Definitions from Welfare "Reform," Family, and Criminal Law*, 83 CORNELL L. REV. 688, 694 (1998) (finding that "[r]ules that absolved fathers of the obligation to support children placed in their mother's custody further reinforced the paternal preference based on economic superiority.").

upbringing.[145] Israeli legal thought so thoroughly and single-mindedly links women with domesticity that they are exempted from any financial responsibility, lest they compete with men over Jewish masculinity.[146]

A final feature reifying the biological definition of fatherhood at the expense of social fatherhood is the system of child support reimbursement. Under Israeli law, if a man who acted as a father later discovers that the child is not biologically his, he is automatically entitled to revoke the child support order, no matter how significant his attachment with the child.[147] In fact, the law goes so far as to entitle the non-biological father to a *retroactive* reimbursement of child support already paid.[148] This doctrinal peculiarity, quite unique among Western countries,[149] further reinforces the biological model of fatherhood.

In one recent case, for example, a man married a pregnant woman he believed to be carrying his child. In the marriage ceremony, he made a pledge to the rabbinical court acknowledging his paternity and vowing to provide for the child.[150] Years after the divorce, a medical test revealed the father was sterile and could not have children. Despite the years that had passed and the independent contractual stipulation, the man was allowed to walk away from his economic obligation, and the mother ordered to reimburse him for all that he had paid throughout the years.[151]

In sharp contrast, when a biological connection does exist, men are *always* liable for the support of the resulting child, even in cases of male victims of

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145. *See, e.g.*, FC (Krayot) 17120/07 Doe v. Doe [2010] (unpublished opinion) (ordering the father to pay child support when custody was assigned to the mother; at some point the court ordered joint physical custody, yet refused to modify or reduce child support payments, viewing the change of custody as irrelevant for purposes of child support); FA (Haifa) 318/05 Doe v. Doe [2006] (unpublished opinion) (suggesting that the father's economic burden may actually be *higher* in the case of joint physical custody than in the case of exclusive mother custody); FA (Jerusalem) 1099/06 Doe v. Doe [2007] (unpublished opinion) (explaining that the custodial mother worked very long hours such that the children effectively spent most of the time with their dad, yet despite the role reversal the court refused to modify custody or child support); Mazeh, *supra* note 138, at 235; *see also Shifman Report*, *supra* note 142, at 21 (showing that the father shoulders exclusive responsibility for the child's necessaries even when the mother is fully capable of sharing the burden). Compare to a Vermont case, where the court awarded custody to a drug-using, unemployed and abusive mother because the unemployed father set a bad example by failing his economic obligations. Maldonado, *supra* note 139, at 969. *See also* Leslie A. Cadwell, Note, *Gender Bias Against Fathers in Custody? The Important Difference Between Outcome and Process*, 18 VT. L. REV. 215, 249-50 (1993).

146. *See Shifman Report*, *supra* note 142, at 21. The stereotype of the Jewish mother is one of "endless caretaking and boundless self-sacrifice" by a mother who demonstrates her love by "constant overfeeding and unremitting solicitude about every aspect of her children's and husband's welfare." Jewish Mother Stereotype, http://en.wikipedia.org/wiki/Jewish_mother_stereotype (quoting Lisa Aronson Fontes) (last visited May 19, 2015).

147. *See e.g.*, Child Support Act, Article 16(b).

148. *Id.*

149. *See* Yefet, *supra* note 11.

150. *See* Rabbinical Court (Beer Sheva) 105655/4 Ploni v. Plonit [2013] (unpublished opinion).

151. *Id.* The fact of the paternal acknowledgment before the court, however, did convince one judge that the reimbursement for paid child support should be reduced by half. *See* opinion of the Judge Rabbi Zion Luz-Iluz.

statutory rape; men who were intoxicated and coerced into sex; or men who never even engaged in sexual intercourse, only in oral sex, and became fathers after their sperm were stolen and used in self-insemination.[152] The imposition of paternal liability by virtue of the genetic facts alone—in what may be properly termed "the strict liability theory of sperm"[153]—reaffirms the paternal model as strictly biological and monetary.

Since child support is by legal definition a male responsibility, Israeli law not only shunts men into the social role of wage earner, but also constructs child-rearing as unmasculine.[154] The very verb used to describe child-rearing is gendered—it is called "mothering" rather than "parenting" because of the widespread stereotype that "fathers are a biological necessity but a social accident."[155]

In "macho" Israeli society, this legal construction of child-rearing drives men away from active childrearing.[156] After all, Israel is a country founded on the Zionist reconstruction of the New Jew as a "man's man."[157] The New Jew is supposed to manifest traditionally masculine norms regarding physique, demeanor, success in the labor market, and a lack of involvement in raising children.[158]

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152. *See, e.g.*, FC (Haifa) 10708/02/09 S.A. v. S.M. [(2009] (describing how the man claimed that the woman, a divorcée with two children, "stole his sperm" by seducing him while he was under the influence of alcohol after assuring him she was on birth control). *See also* Beniel & Ronen, *supra* note 116, at 8 (noting the unbroken legal trend of ignoring the circumstances of conception and holding the father responsible in all cases), 94 (noting the case of "grandfather against his will" when a man was required to support the child of his minor child); Shifman, *supra* note 115 (criticizing this legal trend and contending that the differences between the sexes with respect to family planning justify legal remedies for breach of trust in the form of a child support waiver as well as compensation for the emotional injury resulting from involuntary fatherhood); *Had Sex with a Male Stripper—and Sued for Child Support after 9 Years*, GLOBES (June 30, 2013), http://www.globes.co.il/news/article.aspx?did=1000858072 (in Hebrew) (ordering child support in case of an unemployed father who became a father after serving as a stripper in a bachelor's party and having what he thought was "protected" sex with one of the attendees).

153. *See* Laura W. Morgan, *It's Ten O'Clock: Do You Know Where Your Sperm Are? Toward a Strict Liability Theory of Parentage*, 11 DIVORCE LITIG. 1, 8 (1999) (coining the legal policy of uniformly holding fathers responsible for child support as cases of a "strict liability theory of sperm").

154. Dowd, *supra* note 139, at 533 (noting the "evident lack of value attached to nurturing in concepts of masculinity").

155. McCant, *supra* note 144, at 127 (quoting the famed anthropologist Margaret Mead, *A Cultural Anthropologist's Approach to Maternal Deprivation*, *in* DEPRIVATION OF MATERNAL CARE: A REASSESSMENT OF ITS EFFECTS (1962)).

156. As Nancy Dowd so eloquently encapsulated, "Men's socialization continues to emphasize qualities in conflict with good parenting, and parenting challenges men to adopt characteristics traditionally viewed as unmanly. The combination of socialization and structural constraints on fathers makes it seem 'natural' that mothering and fathering are substantively different, gender specialized and differentiated." Dowd, *supra* note 139, at 533; *see also* Jessica L. Roberts *Conclusions from the Body: Coerced Fatherhood and Caregiving as Child Support*, 17 YALE J.L. & FEMINISM 501, 506 (2005) (noting that "because of the association of child rearing with women, men frequently avoid this form of labor").

157. Tamar Rapoport & Tamar El-Or, *Cultures of Womanhood in Israel: Social Agencies and Gender Production*, 20 WOMEN'S STUD. INT'L F. 573, 574 (1997) (explaining that "the revolutionary-Zionist movement sought to create a new, modern, and advanced society").

158. *See* McCant, *supra* note 144, at 140 (observing that boys "are taught to be macho, real he-men—the strong silent type," and are seldom encouraged to be nurturing "in a society that is shocked

Child support law, then, is a fine illustration of the binary nature of sexual identities: "[W]hen it is stated that one sex must perform certain tasks, this also means that the other sex is forbidden to do them."[159] Child support law must be properly exposed as the backbone of the gendered formation of masculine and feminine identities—the breadwinning father and the caregiving mother. The result is the well-researched sexual stratification of labor and persistent segregation of child-raising work.[160]

B. Child Custody Law and the Gendered Politics of Carework

Child custody law complements child support law in the construction of motherhood and fatherhood as gendered categories and in signifying to men that he who engages in the work of caretaking has flunked the test of masculinity. Well into the twenty-first century, the Israeli custody scheme still confuses womanhood with motherhood, long after the Western world has moved forward.[161] While the legislature designates the woman as the custodial mother for children until the age of six, Israeli courts are still engrossed in the vision of mothers, not fathers, as natural custodians for children of *all* ages.[162]

Probing the politics of gender stereotyping in Israeli custody law reveals a legal system powerfully signaling to men that carework is antithetical to manhood.[163] Analysis of the reports of court-appointed professionals suggests

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and embarrassed when a man cries"), 142 (noting that "[m]en are socialized to be providers and protectors of their wives (i.e., the weaker sex) and their dependent children," and observing that the model of a man "is quite simply a non-parenting father"); Dowd, *supra* note 139, at 535 (explaining that homophobia is a significant driving force discouraging men from nurturing children by labeling child-rearing "women's work" and somehow inferior to breadwinning). For an illuminating account of the crippling effects of these stereotypes, see generally J. DITTES, THE MALE PREDICAMENT: ON BEING A MAN TODAY (1985); JOAN WILLIAMS, UNBENDING GENDER: WHY FAMILY AND WORK CONFLICT AND WHAT TO DO ABOUT IT 64 (2000) (describing how the ideal worker is physically, socially, and familially male).

159. Claude Levi-Strauss, *The Family*, *in* MAN, CULTURE, AND SOCIETY 347-48 (Harry Shapiro ed., 1971). The U.S. Supreme Court was also cognizant of the binary nature of sex stereotypes, stating that "stereotypes about women's domestic roles are reinforced by parallel stereotypes presuming a lack of domestic responsibilities for men." Nev. Dep't of Human Res. v. Hibbs, 538 U.S. 721, 736 (2003).

160. Daphna Hacker, *Motherhood, Fatherhood and Law: Child Custody in Israel*, 133 TEL AVIV U.L. FAC. PAPERS 409, 425 (2005) (in Hebrew) (noting that unlike other legal systems, Israeli divorce law reflects and reinforces the gender divide in labor markets).

161. *See* Capacity and Guardianship Law, 1962, LSI 120, §§ 24-25 (providing that there is a presumption that children until the age of six will reside with their mother); *see also* Hacker, *supra* note 160, at 411-12, 413.

162. Hacker, *supra* note 160, at 412. For a detailed analysis of Israel's child custody scheme and its implementation in the family courts, see Yoav Mazeh, *The Anomaly of 'Custody' in Israeli Family Law*, 28 ISRAEL STUD. REV. 247 (2013) (in Hebrew).

163. *See* Hacker, *supra* note 160, at 416 (2005) (finding that the current system discourages men from assuming expansive parental roles and highlighting the contribution of law to the gendered social expectations and coercions that control Israeli women and men's ability to shape their parental roles and identities); *see also* SUSAN ANDERSON-KHLEIF, DIVORCED BUT NOT DISASTROUS: HOW TO IMPROVE THE TIES BETWEEN SINGLE-PARENT MOTHERS, DIVORCED FATHERS, AND THE CHILDREN 87, 90 (1982) ("Women are under a great deal of pressure to take custody after divorce . . . . It is, indeed, possible that

that social workers adopt this theory; a father's role in childrearing and his feelings for his children are largely ignored (and when described, are done so in behavioral rather than emotional terms).[164] Both the law and the professionals who implement it downplay the emotional suffering men experience by losing custody, even though research on non-custodial fathers has documented such suffering as involving strong feelings of grief, loneliness, and incompetence. Consequently, men have been termed "the unrecognized victims of divorce."[165] While emotions are ignored, the man's lack of contact with his children is noted objectively in neutral terms, a behavior for which mothers have been harshly criticized as deserters.[166]

Consider the differing treatment of "deviant" mothers in American versus Israeli custody law. American custody law penalizes working women's "workaholic values" by depriving them of custody (even when the father's work schedule is more demanding).[167] At the same time, however, the wealthier parent has "an edge in custody disputes,"[168] a trend virtually non-existent in

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most women feel they have 'no choice'"); Maldonado, *supra* note 139, at 984 ("The societal pressure on women to have residential custody is so great that mothers who may not want custody may seek it to avoid social stigma").

164. Orna Cohen & Dorit Segal-Engelchin, *Suzi and Mr. S.: Gender Role Stereotyping in Social Workers' Court Reports in Custody and Access Cases*, 70 SMITH C. STUD. SOC. WORK 475, 483-492 (2000).

165. Baum, *supra* note 70, at 223; *see also* Terry Arendell, *The Social Self as Gendered: A Masculinist Discourse of Divorce*, 15 SYMBOLIC INTERACTION 151, 158 (1992); Daphna Hacker & Ronen Shamir, *Concepts of Motherhood, Fatherhood and Family in Israeli Courts: A Case Study*, 2 ISRAELI SOC. 311, 318 (2003) (in Hebrew).

166. *See* Cohen & Segal-Engelchin, *supra* note 164.

167. Berger, *supra* note 144, at 279 (noting that the vision of a working woman matches that of a good mother "only if she would rather be at home raising her children, but instead is forced to work for financial reasons." That vision is "consistently drawn" in child custody disputes where "working mothers are disadvantaged, especially when they seek financial security or independence by pursuing a demanding career."); Murphy, *supra* note 144, at 697 (noting that "working women lost custody in part because of long hours and 'workaholic' values, or because of a decision to accept a scholarship and enroll full time in college which would require placing their child in a day-care center"). *See, e.g.*, Watson v. Watson, 15 So. 2d 446, 447 (Fla. 1943) ("If she goes and returns as a wage earner like the father, she has no more part in [child care] than he and it necessarily follows that all things else being equal, she has no better claim when the matter of custody is at issue"); Masek v. Masek, 228 N.W.2d 334, 337 (S.D. 1975) (awarding custody to a full-time working father, rather than the mother who worked part-time as a teacher, because the mother's "primary interests are in her musical career and outside of the home and family"); McCreery v. McCreery, 237 S.E.2d 167, 170 (Va. 1977) (awarding father custody, even though both parents worked full time, because the mother had a "preoccupation with the 'glamour of her work'"); Prost v. Greene, 652 A.2d 621, 624-25, 628 (D.C. 1995) (awarding custody to the full-time working father after deciding that the mother was more devoted to her career, even in the face of court-appointed psychologist testimony that the children were primarily attached to their mother); Richmond v. Tecklenberg, 396 S.E.2d 111, 112 (S.C. Ct. App. 1990) (awarding father custody of his young daughter due to mother's role as a physician, despite father's comparable work schedule).

168. Murphy, *supra* note 144, at 698; *see also* Berger, *supra* note 144, at 283 (judges favor fathers for custody when the challenged mother has less money than the father and when she has a career or career demands), 280-81 ("[E]ven though mothers who work for wages often are viewed unfavorably, mothers who are economically dependent also are at risk of losing custody. State law may require or allow the court to consider the economic circumstances of the parents, but even without such authority,

Israeli law. Financial independence is conceptually foreign to the parenting role assigned to Israeli women.[169] Israeli law is so fixated on the vision of motherhood as feminine that women are almost always considered naturally superior to men as custodial parents, even if only as the lesser of two evils.[170] Even when Israeli parents agree themselves upon joint physical custody, legal actors as well as psychologists and social workers collaborate to actively frustrate this option.[171] Judges often order such parents to undergo scrutiny by psychologists and evaluation of their "parental capabilities" by social workers.[172]

When recent family court rulings challenged the legal tradition of discounting men as custodial parents, the Supreme Court intervened, emphatically opposing shared parenting and drawing a stark distinction between maternal and paternal roles in childrearing.[173] The Court stressed that even if the father is paternally superior, sole custody must be awarded to the mother in the absence of compelling reasons that disqualify her as a caretaker. In one such case, the Court overruled the family court decision and ordered sole custody transferred from father to mother, a physician who delegated child-raising to her parents. This notwithstanding that the father was very involved in the children's lives, had adjusted his work schedule to take care of them, and was designated by the expert opinion of the Child Welfare Services to be the custodian who would best serve their interests.[174]

The "good mother" myth, then, is profoundly sewn into the fabric of Israeli law. To use Karen Czapanskiy's terms, fathers are "volunteers"; mothers are "draftees."[175] These terms "volunteer" and "draftee" suggest a military metaphor, which is particularly apt in the Israeli context. While in

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judges may still grant custody to the parent who appears to be more stable, more financially secure, or more able to provide advantages.").

169. WILLIAMS, *supra* note 158, at 2 ("The ideal worker is someone who works at least forty hours a week year round. This ideal-worker norm, framed around the traditional life patterns of men, excludes most mothers of childbearing age.").

170. *But see* FC (TA) 17174-11-09 R.B. v. A.A. [2012] (unpublished opinion) (calling on the courts to abandon outmoded and prejudiced stereotypes since Israel in 2012 witnessed a new generation of modern fathers who seek to shoulder the traditional "motherly" functions and play a more significant role in their children's lives, and arguing that the law should give its blessing to this evolving trend).

171. *See* Cohen & Engelchin, *supra* note 164, at 476.

172. Hacker, *supra* note 160, at 416-17. *But see* Daphna Hacker & Ruth Halperin-Kadari, *Decisional Rules in Custody Disputes—on the Perils of the Parental Equality Illusion in a Gendered Reality*, 15 HAIFA L. REV. 1, 11-18 (2013) (in Hebrew) (noting recent and intermittent evidence for an emerging openness to considering fathers as joint custodians).

173. *See, e.g.*, FA 1858/14 Ploni v. Plonit [2014] (unpublished opinion); FA (TA) 55785-02-12 S. et al. v. B. [2012] (unpublished opinion) (criticizing the growing tendency of Family Court judges to ignore the tender years presumption and reminded them that it is the Parliament's prerogative and not theirs).

174. FCA 38844-10-13 (Nazareth) Plonit v. Ploni [2014] (unpublished opinion). This decision was reaffirmed by the Supreme Court in FA 1858/14 Ploni v. Plonit [2014] (unpublished opinion).

175. Karen Czapanskiy, *Volunteers and Draftees: The Struggle for Parental Equality*, 38 UCLA L. REV. 1415, 1415-16, 1449 (1991).

many cultures fatherhood may be "society's most important role for men" and the activity that helps them most to become "good" citizens,[176] in Israel fatherhood takes a backseat to the ethos of the man-as-warrior.

Child support law is enlisted to enforce this ideology, and under it men are essentially, but for their sperm and their checkbooks, a "disposable" parent.[177] As of today, there is no clear indication in the law that men are required, expected, or even able to help with carework.[178] The very term "visitation" denotes the father's role as a mere *visitor* in his children's lives,[179] while the system stigmatizes as "obsessed" nonconformist men who take visitations more seriously and in so doing challenge the dominant form of masculinity.[180]

One Israeli sociological study investigating visitation arrangements after divorce found a remarkable variety of visitation schedules as the by-product of the lack of legal rules regarding active fatherhood.[181] The most common visitation schedule (also the default rule in the court's standard agreement) allows the father to see his children "at any time,"[182] a default underpinned by the "very vague conceptualization and uncommitted application of the divorced father's role."[183] Indeed, fathers who signed these default agreements saw their children the *least*, suggesting an easy translation of "any time" visitations to "no time" visitations.[184]

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176. DAVID BLANKENHORN, FATHERLESS AMERICA: CONFRONTING OUR MOST URGENT SOCIAL PROBLEM 25 (1995).

177. Maldonado, *supra* note 139, at 939 ("society treats a divorced father as less of a father"); McCant, *supra* note 144, at 136 (noting that under child support law "the cultural discrimination continues and the mother is considered to be the parent and the father the provider"); *see also* Mel Roman, *The Disposable Parent*, 15 CONCILATION COURTS REV. 2, 2 (1987).

178. Dowd, *supra* note 139, at 526 (observing that also in American law, "[s]upport for the nurturing aspect of fatherhood is very limited, hidden, and indirect"); *id.* at 527 ("The perpetuation of a *merely* biological and economic definition of fatherhood is apparent in much modern law, which silently accepts a lack of nurturing as unremarkable.").

179. Hacker, *supra* note 160, at 424; *see also* Maldonado, *supra* note 139, at 977 (noting that the law has taken away men's parental authority by relegating them to the role of a visitor).

180. Hacker, *supra* note 160, at 423; *see also id.* at 424 ("[M]ost lawyers and judges do not seem to assume an active role in encouraging fathers to take a more significant role in their children's lives, in fact, often discouraging them from doing so."). Other research on Israeli fathers also reports that courts, social workers, and other professionals discourage paternal involvement in children's lives with the belief that "fathers are incapable of functioning well with more frequent visits and/or that contact with the father is not in the younger child's best interest." Accordingly, at their recommendation, forty percent of Israeli fathers are made to see their pre-school children for only brief mid-week visits, thus ensuring "distant and strained relationships." *See* Sharona Mandel & Shlomo A. Sharlin, *The Non-Custodial Father: His Involvement in His Children's Life and the Connection Between His Role and the Ex-Wife's, Child's and Father's Perception of that Role*, 45 J. DIVORCE & REMARRIAGE 79, 80 (2006).

181. *Id.* at 418-19.

182. *Id.* at 420-21.

183. *Id.* at 421.

184. *Id.* (finding that the more detailed a visitation arrangement is, the more time the father will spend with this children). It should be stressed that while there is no indication of general paternal disengagement following divorce in Israel, see Hacker & Halperin-Kadari, *supra* note 172, at 24-25. While Israeli fathers reported visiting their children and talking to them on the phone more frequently than their American counterparts (mainly due to closer proximity to children, compared to U.S. fathers, *see* Erera et al., *supra* note 141, at 59, 73, 76), their visits were still less regular than those of American

Israeli men have internalized this standard. One study comparing the paternal involvement of Israeli versus American non-custodial fathers found that "the cultural ideal for fathers in Israel regardless of their marital status is more accepting of distant or traditional behavior. That is, they represent a father model that is more passive, less involved in activities, and less assuming of parental responsibility."[185]

In fact, when men do take a more active role in parenting, it remains invisible to the law; their caregiving efforts frequently do not translate into a comparable economic reduction of their support obligations. In this way, child custody law in conjunction with support law discourages fathers from taking a significant role in their children's lives.[186]

Exacerbating the gender bias in child custody law, legal enforcement authorities employ a double standard in enforcing visitation agreements. When a father fails to return a child on time after a visitation, Israeli law enforcement comes emphatically to the mother's aid and initiates criminal proceedings against the father.[187] Yet when a mother frustrates a visitation agreement, police consistently refuse to interfere.[188] While American mothers who deny rightful paternal visitation are subject to "extensive coercion"[189] and eventually to loss of custody,[190] their Israeli counterparts may actually be rewarded for a systematic violation of custody schemes; courts sometimes readjust the arrangement *in favor* of the transgressor mother.[191] Such a gender bias

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fathers; moreover, they were less frequently involved in child-related activities, engaged less in homework assistance, and generally reported their children to be less psychologically present to them (that is, they thought of the child less frequently). *See id.* at 67-68, 73-74; Mandel & Sharlin, *supra* note 180, at 93.

185. Erera et al., *supra* note 141, at 74.

186. Hacker, *supra* note 160, at 425.

187. Mazeh, *supra* note 138, at 235-36.

188. *Id.* at 236-37, 266. In contrast to other countries as varied as France, Australia, and the United States, Israeli enforcement authorities treat a mother's breach of father's visitation privileges forgivingly, even when the violation is systematic. At the same time, while transgressing women face "institutional tolerance," fathers who spend more time with children than agreed will encounter "active and intensive" police and prosecutorial involvement. *Id.* at 244-45.

189. Czapanskiy, *supra* note 175, at 1448, 1449 n.115 (stating that the consequences for failing to permit visitation range from a contempt citation to a fine, imprisonment, or loss of custody).

190. American courts may go so far as to fine a woman or even transfer custody from mother to father for a single incident of visitation denial, even, in some cases, when the father was abusive to both wife and children. For a thorough description and a poignant critique of this reality, see Murphy, *supra* note 144, at 756-61. Despite the "ample evidence in the record of the father's violence towards his wife and children, as well as his lack of commitment to his children's financial security . . . the court was willing to 'reward' him with the children in order to punish the mother for her rebellious refusal to obey the court's visitation order." *Id.* at 761 (describing the decision in Bates v. Bates, CA No. 87-394 (Md. Cir. Ct. Apr. 6, 1989)).

191. *See, e.g.*, File No. 011536307532 Rabbincial Court decision (Jerusalem), M.D. v. B.D. [2007] (unpublished opinion); FC (Ramat-Gan) 40865/98 Y.A. v. N.A. [2005] (unpublished opinion); *see also* Mazeh, *supra* note 138, at 263 (criticizing such cases and remarking that not only did breaching mothers go unpunished for their repeated violations, but they were actually incentivized to frustrate the visitation agreement in the hope of further limiting the father's access to his children).

wrongfully suggests that good parenting is sex-specific, and that men cannot (or should not) nurture their children as mothers do.

The gender bias suggests that in the eyes of the law, women are assigned care *responsibilities*, while men get visitation *rights*.[192] Conceiving of fathers as "volunteer" parents, the law imposes no sanction whatsoever on a father who fails to meet his contractually stipulated visitation commitment.[193] No reimbursement is given to the mother for the extra costs imposed by an emotionally deadbeat dad.[194] As long as a man meets his child support payments, he is considered to have fulfilled his legal obligations to his children.[195] His paternal disengagement does not even violate social norms.[196]

A recent case shows the minimized judicial importance given to a man's active involvement with his children. A family court declined a mother's request to deny visitation to an HIV-infected father, holding it was in the best interest of the daughter to remain in touch with her loving father, who posed no health risks to her.[197] While the family court justified this decision with overblown rhetoric about parental rights, it sufficed itself with granting the father a bare minimum of visitation rights—*one* hour per week and under the supervision of a social worker.[198]

Another recent case, handed down while writing this article, heralds possible seeds of change but falls short of much-needed reform. In a precedential case, one family court granted a mother's request for extended visitations despite the father's persistent opposition (given for economic reasons).[199] The court reasoned that extended visitations were critical for the children's welfare and in order to ensure the father's continued presence in

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192. Hacker, *supra* note 160, at 423 ("While custody is defined in law as the custodial parent's obligation, visitation is defined as the non-custodial parent's right.").

193. *See id.* at 424 ("[N]o legal stipulations or penalties exist regarding the non-custodial parent's failure to carry out the visitation schedule set in the divorce proceedings."); *id.* at 424 ("[N]on-custodial fathers . . . may force the mother to accept total responsibility for the children by not showing up for visits."); Roberts, *supra* note 156, at 509 ("Even in cases in which fathers have visitation agreements, there are no legal or social sanctions for their failure to fulfill obligations such as periodic visits or transporting their children to school.").

194. Czapanskiy, *supra* note 175, at 1442 (observing that a "volunteer father enjoys the prerogative of ignoring his child"); *id.* at 1449 ("[T]he mother has no right to demand that the father even compensate her for extra expenses if he fails to provide care for the child during an appointed time.").

195. *See* Cahn, *supra* note 35, at 214 ("Fatherhood is still defined in terms of the breadwinning role, rather than the emotional caregiving role. Fatherhood remains less important to men's self-definition than [motherhood] to women's."); Maldonado, *supra* note 139, at 927 ("[P]aternal absence following divorce has been accepted as almost normal."); Roberts, *supra* note 156, at 509.

196. Dowd, *supra* note 139, at 530 ("[T]he pattern of post-divorce fathering as limited or non-existent nurturing is accepted as 'natural.'"); Maldonado, *supra* note 139, at 940 ("In many communities, so long as a divorced father pays child support—even if he does nothing else for his children—he is perceived as a decent, maybe even a good, father. Even if he has little contact with his children, so long as he supports them financially he will not elicit the moral opprobrium . . . . [S]ociety nonchalantly accepts that many fathers will abandon their children after divorce.").

197. FC (Beersheba) 43071-01-13 A.M v. A.G. [2014] (unpublished opinion).

198. *Id.* §§ 14-16.

199. *See* FC (TA) 15756-08-12 Jane Doe v. John Doe [2013] (unpublished opinion).

their lives post-divorce.[200] Still, while the court equitably readjusted child support, it failed to provide a remedy should the father fail to fulfill his commitments.[201] This of course means that if the father does fail, he will enjoy paying reduced child support while the mother carries the burden of initiating legal proceedings to enforce visitations. For this reason the decision, while promising, leaves much ground yet to be gained.

Relocation doctrine also marginalizes fathers as caretakers and says much about the influence of hegemonic masculinity on judicial thinking. As a rule, custodial mothers are afforded virtually unlimited discretion to relocate for whatever reason and to whatever distance, even to a different continent.[202] In fact, in relocation cases courts exhibit an unusual trend of rejecting expert opinions when those experts recommend against relocation and in favor of paternal custody.[203] In one instance, the family court rejected the expert's father-friendly conclusion despite accepting his factual findings; the court allowed the mother to relocate to the United States even though the father was not allowed in that country.[204]

In a landmark relocation case, the custodial mother asked the court for permission to relocate to London only five months after the divorce, a move intended to frustrate the father's generous visitations arrangement on account of her new romantic relationship. The mother admitted to the court that she was immigrating to London to be with her new partner, and that she would make the move even if doing so lost her custody.[205] Making matters more complex, the expert psychological evaluation reached the fairly rare conclusion that both parties were equally competent parents and that separation from either would harm the child.[206] Still, the courts had no difficulty granting the mother's motion to relocate, while highlighting her new partner's superior breadwinning skills and giving only the most cursory treatment to the father's intensive involvement with the child and his active and manifest desire to serve as an engaged parent.[207]

Not only is there no legal indication of any social expectation that men will assist in child-rearing, but when a man does want to assume primary responsibility for childcare, the law sabotages his efforts. As aforementioned,

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200. *Id.* §§ 83, 86.

201. *See* Lital Yaakobovitz-Daray, *Court Imposing a Father to Sleep His Children in His Parents' House*, TAKDIN (Aug. 21, 2013) (in Hebrew), http://www.takdin.co.il/Pages/Article.aspx?artId=4310340.

202. *See, e.g.*, FA 9358/04 Plonit v. Ploni [2005] (unpublished opinion) (stating that it is irrelevant whether relocation is justified); *see also* Hacker & Shamir, *supra* note 165, at 313 n.6, 322.

203. *See, e.g.*, CA 4575/00 Plonit v. Almoni, 55(2) PD 321 [2000]; FA 10060/07 Plonit v. Ploni [2008] (unpublished opinion); FA 516/09 Plonit v. Almoni [2010] (unpublished opinion); FC 4126-01-12 S.B v. Sibi [2013] (unpublished opinion).

204. FC (TA) 21969-02-14 A v. D [2014] (unpublished opinion).

205. FA 4575/00 Plonit v. Almoni, 55(2) PD 321 [2000].

206. Hacker & Shamir, *supra* note 165, at 314.

207. *Id.* at 325, 326 n.29, 327.

where men in *broken* families gain full custody, child support law still makes them pay in the form of support for their children.[208] Similarly, the National Insurance Act severely fines men in *intact* families who reverse roles and forgo employment in order to stay home and raise their children. The law explicitly disqualifies men from the occupation of "homemaker"—the legal terminology itself is not gender-neutral, opting for the term "housewife"—rendering only women eligible for a series of benefits from which men are excluded.[209] In this way the law effectively ensures that in an economically efficient family unit, it will always be logical to designate the woman—never her husband—to stay at home, and that gender-deviant couples will literally pay for pursuing a perverse life course.[210]

Interestingly enough, the only legal rule endorsing a social form of nurturing fatherhood applies to *foreign* men who father Israeli children. According to immigration policy, one of the prerequisites for a foreign father to obtain legal status to remain in Israel is maintaining a close and continuous relationship with his child, in addition to economic provision.[211] Further, the gender stereotyping permeating custody decisions is almost totally absent from the case law involving foreign parents.[212] This sharp contradiction supports the thesis that the Jewish State is concerned first and foremost with cultivating the hyper-masculinity of *Israeli* men. As such, policies targeting non-Jewish foreigners are cleansed of the law's rigid role expectations of men.

A final potent manifestation signaling the marginalization of fathers in Israeli society is that fathers' rights groups, though vocal, have failed to achieve "public recognition as carriers of a legitimate socio-legal change" as their Western counterparts have.[213] In response, Israel's men's organizations have embarrassed Israel before UN committees and American courts by reporting

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208. *Id.* It should be noted, however, that this trend is slowly beginning to change. There are some sporadic family court decisions that take into calculation the fact that the father retains sole or shared custody over the children.

209. National Insurance Act [Consolidated], 1995, art. 238. *See also* Hacker, *supra* note 78, at 42.

210. When a nonconformist husband who sought to stay home challenged the archaic exclusion of the law and asked to be recognized as a homemaker, the Court turned him down. In the face of flagrantly blatant discrimination, all the Court was reservedly willing to concede was that it is merely "*possible* that this law, applying a different arrangement for man and woman, *somewhat* affects equality." HC 1046/09 Senia Social Security Institute (pending) [2010], at § 2. The Court went on to say that even if there were discrimination, the law was valid since it was a longstanding piece of legislation and protected by the Savings Clause. But the Court could have easily avoided the constitutional immunity if it so desired—the law was reenacted in 1995 and as such could have been properly viewed as lying outside the umbrella of constitutional protection.

211. Tally Kritzman-Amir, *On Parents and Children: Family Reunification in Israel*, 44 HEBREW U. L. REV. 361, 383-84 (2014) (in Hebrew).

212. *Id.* at 402.

213. DAPHNA HACKER, PARENTHOOD IN THE LAW—CUSTODY AND VISITATION CONSTRUCTION UPON DIVORCE 246 (2008) (in Hebrew).

the discrimination fathers suffer in a biased legal system.[214] The UN Committee on Economic, Social and Cultural Rights has called on Israel to reform its gendered child custody and support law.[215] Recently, Israeli fathers sued the Israeli Minister of Justice and the Israeli Welfare Minister, among others, in at least five American jurisdictions for millions of dollars of damages suffered under "gross violations of human rights and torture arising out of an institutionalized discriminatory policy of disengaging and separating fathers from their minor children."[216]

Israeli men have internalized their patriarchally-designated role as the family's breadwinner to the exclusion of nurturing roles; this in turn has led to a workaholic Israeli culture. To conform to the Zionist model of hyper-masculinity, an "ideal worker" in Israel must be a "total worker."[217] According to the OECD, Israelis work an extraordinarily high number of hours—many over fifty hours per week—outstripping almost all of their counterparts in other industrialized nations.[218] In fact, Israelis work an *additional* workday; Israel is the only country in the Western world in which Sunday is a regular weekday.[219] Even men's "free" time is subject to the demands of the market; Israeli labor norms uniquely allow employers to contact their employees at home.[220] It is telling that the legal term for employer in Hebrew is "enslaver" or "master" (*Ma'avid*), with the negatively loaded

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214. Daphna Hacker, *Men's Groups as a New Challenge to the Israeli Feminist Movement: Lessons from the Ongoing Gender War over the Tender Years Presumption*, 18 ISRAEL STUDIES 29, 33-34 (2013).

215. United Nations, Consideration of Reports Submitted by States Parties Under Articles 16 and 17 of the Covenant Concluding Observations of the Committee on Economic, Social, and Cultural Rights, U.N. Doc. E/C.12/ISR/CO/3, art. 22 (Dec. 16, 2011).

216. Hacker, *supra* note 214, at 34 (quoting Complaint, Haim v. Neeman, No. 2:12 CV 351 (Newark) (D.N.J. Jan. 17, 2012)); *see also* Weisskopf v. Jewish Agency for Israel, Inc., No. 12-cv-6844 (S.D.N.Y. Apr. 30, 2013); Weisskopf v. Neeman, No. 11-cv-665 (W.D. Wisc. Mar. 20, 2013) (ECF 46, slip op.); Weisskopf v. United Jewish Appeal-Fed'n of Jewish Philanthropies of N.Y., Inc., No. H-12-130, 2012 WL 3686692 (S.D. Tex. Aug. 22, 2012); Weisskopf v. United Jewish Fed'n of Pittsburgh, Inc., No. 11-cv-1575 (W.D. Pa. Jan. 27, 2012) (ECF 7).

217. Arian Renan-Barzilay, *Working Parents: Multidimensionalism and Working-Class Social Feminism—A New Theoretical Framework for Reconciling Work and Family in Israel*, 35 TEL AVIV U. L. REV. 307, 327-28 (2012).

218. According to OECD figures, Israelis work 251 more hours a year than the OECD average; they work 2,000 hours a year, compared with 1,650 hours by the British, 1,419 hours by Germans, and 1,414 hours by Norwegians. The Israeli workweek is 43 hours, more than the 40 hours in the United States and 37 in Denmark. Anat Cohen, *Israelis Work Longer Hours than OECD Average*, GLOBES (Aug. 4, 2012), http://www.globes.co.il/serveen/globes/docview.asp?did=1000739871&fid=1725; *see also* Hacker & Halperin-Kadari, *supra* note 169, at 57 n.237.

219. In Israel, Saturday is the only full day off work, whereas Friday is a half day of work. Further, although a formal law does attempt to limit the number of working hours per week, the fact that it contains numerous exceptions and remains wholly unenforced renders the law a "dead letter." Renan-Barzilay, *supra* note 217, at 349.

220. Hanoch Doum, *Someone Took Responsibility*, YEDIOT ACHARONOT (June 27, 2014) (in Hebrew); *see also* Hanoch Doum, *12 Hours a Slave: Israelis Work Too Hard and Lose Too Much*, YEDIOT ACHARONOT—SEVEN DAYS (Apr. 24, 2015) (in Hebrew) (decrying the fact that "according to all studies, Israelis work too much," two hours longer than Europeans and 50 minutes more than Americans).

connotation of an owner-slave relationship.[221] This demanding lifestyle, precluding active parenting for fathers, displays a hyper-masculine attitude imposed on men by a culturally dominant male code.

For working women, in contrast, Israel is ranked fifth from the bottom, with a fifty-five percent employment rate of working mothers.[222] When the legislature recently intervened to mitigate work-family conflict, it provided a gendered tax benefit available to women, but not to men, for the caretaking of their preschool children.[223] This is another means by which the law collaborates with hegemonic masculinity norms to drive men away from active fathering.

In sum, the Israeli legal system has put forward a definition of breadwinning masculinity and of men's role as purely bio-economic, leaving virtually no room for men's capacity to nurture and parent. These gendered perceptions of parenthood have recently been forcefully shaped by a new development in child support and custody case law. To this we now turn.

C. Same-Sex Families and the Same Old Legal Vision of Parenthood

This Subpart argues that the masculinity of the 'family man' seems to be enmeshed with sexual propriety. Those who "fail" the standards of heteronormativity cannot achieve the status of legal father for the purposes of child support law. Put simply, the law constructs the father figure around a centerpiece of hegemonic masculinity that mandates heterosexuality.

To date there are only a handful of legal cases regulating parental responsibilities in a broken same-sex family. This cannot serve, of course, as a solid basis to draw far-reaching conclusions, yet this nascent body of law is of interest because it betrays the same consistent conceptions of motherhood and fatherhood underlying the areas of regulation already examined.[224]

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221. While writing these lines, the Knesset cognizant of the problematic connotation of the word "Ma'avid" decided to change the term throughout the statutes. *See* Lior Shadmi Shpitzer, *Israeli Parliament Decided: The Term "Enslaver" Will Be Erased from the Statutes Book and Replaced with "Employer,"* TAKDIN, (July 8, 2014), http://www.takdin.co.il/Pages/Article.aspx?artId=4650404 (in Hebrew).

222. Hilla Weisberg, *The Troubling Ranking of the OECD: You Don't Enjoy and Don't Sleep—Only Work*, THE MARKER, (Jan. 4, 2012) (in Hebrew), http://www.themarker.com/career/1.1608681.

223. Renan-Barzilay, *supra* note 217, at 347.

224. To be sure, this subpart refers only to the legal treatment of same-sex families in the limited area of child support law, which to date remains under-developed. There are, of course, other contexts in which Israeli family law had to grapple with same-sex couples or parents. For example, in the area of employment law, CA 721/94 El Al v. Danilovitz 48(5) PD 749 [1996] now ensures that homosexual couples enjoy equal status in all employment-related issues. In the area of marriage law, HCJ 3045/05 Ben-Ari v. Director of Population Administration, Ministry of Interior, (2) IsrLR 283 [2006] obliges the State to register and recognize same-sex marriages performed abroad. In the area of adoption law, see the famous case CA 10280/01 Yarus-Hakak v. Attorney General, 59(5) PD 64 [2005], in which the Israeli Supreme Court ordered the state to allow the adoption by two lesbian partners of each partner's biological children. In the area of reproductive technologies, see the current debate in the Israeli Parliament over whether to legally allow homosexual couples to become parents through intra-country surrogacy. Mazal Mualem, *Israel Surrogate Law a Victory for Gay Rights*, AL-MONITOR (June 2, 2014),

Based on these conceptions of motherhood and fatherhood, we should be unsurprised that the emerging judicial treatment of lesbian and homosexual families exhibits a nearly schizophrenic approach to defining legal parenthood based on gender. In the case of the lesbian family, we would expect courts to acknowledge lesbian partners as appropriate carriers of parental rights and responsibilities. As part of Israel's "compulsory motherhood" regime,[225] the law sees every woman as a potential mother, regardless of sexual orientation. For women, social parenthood is enough to establish maternal status.[226] However, while economic provision is never a part of the role definition of Israeli women, we might expect courts to find it suitable for those the law considers to be not "real" women, namely, lesbian females.[227] Stereotypically constructed by dominant society as masculine, bull-dagger, aggressive, and butch, lesbian women violate core concepts of femininity.[228] Their "deviant" sexual orientation thus allows the law to depart from its normally rigid stance and render breadwinning the responsibility of one of the two lesbian partners.[229]

Consistent with these expectations, in the few cases involving lesbian families, the courts have had no difficulty in recognizing the rights and responsibilities of non-biological lesbian mothers who had co-parented a child and functioned as a social parent.[230] After all, these women remained loyal to the gendered cultural script written for them as female caregivers, their sexual orientation notwithstanding. The courts also found no difficulty in imposing on the non-biological partner child support obligations. A careful reading of the available case law reveals that the non-biological lesbian parent is most often seen as "wearing the pants" in the family as the primary wage earner.[231]

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http://www.al-monitor.com/pulse/originals/2014/06/surrogacy-lgbt-bennet-ariel-gay-rights-knesset.html. In these and other fields, Israeli law on the same-sex family structure is liberal and advanced in comparison to many other western nations. Yet in the area discussed in this section, we encounter the same impulses I identify throughout the article.

225. *See* Yefet, *supra* note 11, at Part II.

226. This has long been the case in American law. *See, e.g.*, Rubano v. DiCenzo, 759 A.2d 959 (R.I. 2000) (holding that a former non-biological lesbian mother could bring action for visitations with a child she had helped to raise); V.C. v. M.J.B., 748 A.2d 539 (N.J. 2000) (holding the same); E.N.O. v. L.M.M., 711 N.E.2d 886 (Mass. 1999) (holding the same).

227. Marc A. Fajer, *Can Two Real Men Eat Quiche Together? Storytelling, Gender-Role Stereotypes, and Legal Protection for Lesbians and Gay Men*, 46 U. MIAMI L. REV. 511, 621 (1992).

228. Mary Eaton, *At the Intersection of Gender and Sexual Orientation: Towards Lesbian Jurisprudence*, 3 S. CAL. REV. L. & WOMEN'S STUD. 183, 200 (1994).

229. The masculine stereotype associated with lesbians may also explain the difficulties they face in custody cases. *See* KATH WESTON, FAMILIES WE CHOOSE: LESBIANS, GAYS, KINSHIP 172 (1991) ("[T]he 'butch stereotype' of lesbians seems diametrically opposed to the nurturance and caretaking so closely associated with motherhood in the United States.").

230. *See, e.g.*, FC (TA) 21910-02-10 A v. M [2013] (unpublished opinion); FC (Rishon Le'zion) 033470/07 Plonit v. Plonit [2008] (unpublished opinion); FC (TA) 14-03-37745 Nilli v. Orit [2014] (unpublished opinion).

231. For stereotypes of lesbians in Israel and the tendency to conflate "lesbian" with "butch," leading to the invisibility of femme women, see generally Diana Luzzatto & Liora Gvion, *Feminine but Not Femme: The Dual Lesbian Body*, 48 J. HOMOSEXUALITY 43 (2004).

In one such decision involving a lesbian family, the court held that *both* women should shoulder economic responsibility equally, even though the law normally does not saddle the custodial mother with child support obligations. I suggest that this peculiar ruling owes to the conception that the biological mother in the case not only violated norms of femininity by virtue of her sexual orientation, but also by her conduct as a mother. The biological mother violated the "categorical imperative" of Israeli women by relinquishing parenthood altogether (as the court stressed, her breadwinning partner was the one who had to convince her that they should become parents, and who in fact did the lion's share of the caretaking as well).[232] A woman who denies her national-natural role as a breeder is thus, in the eyes of the law, justified in being saddled with the "masculine" burden of breadwinning.

In the case of male homosexual partners, however, we would expect the courts to treat issues of parenthood and child support differently, consistent with the conception of Israeli hyper-masculinity. In keeping with the rigid approach of motherhood as social and fatherhood as biological, we would expect attitudes about gender and sexuality to pathologize non-heterosexual lifestyles in a way that preclude gays, but not lesbians, from parenting roles.[233] In this regime, we would expect the message to homosexual fathers to be that a biological child is their sole economic responsibility—the law will agree to impose no obligation on their partner to help them raise the child.

While the law encourages lesbian women to become mothers by splitting child support obligations, we would expect it not do the same for men, given that parenthood is central to women's identity—and thus requires support—while merely peripheral to hegemonic masculinity.

Even more significant, I suggest that since a homosexual man threatens hegemonic masculinity by rejecting "the mandatory heterosexuality of the 'new Jew,'"[234] the law would also act to strip him of a most powerful symbol of successful manhood—breadwinning and economic provision.[235] As masculinities theory reveals, gay men are considered feminine and thus are expected to practice a "deviant" kind masculinity; they "are, in effect, 'women' too."[236] If this is the case, we can expect the court not to assign the gay father the gender role of "real" men. Indeed, the resistance to

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232. FC (TA) 21910-02-10, A v. M at §§ 4.6, 5.7-5.10, 6.4, 6.11.

233. For the legal treatment and judicial assumption regarding gay families *see generally* David K. Flaks, *Gay and Lesbian Families: Judicial Assumptions, Scientific Realities*, 3 WM. & MARY BILL RTS. J. 345 (1994); Nancy D. Polikoff, *This Child Does Have Two Mothers: Redefining Parenthood to Meet the Needs of Children in Lesbian-Mother and Other Nontraditional Families*, 78 GEO. L. J. 459 (1990).

234. Shadmi, *supra* note 56, at 215.

235. *See also* Dowd, *Masculinities*, *supra* note 1, at 222. *Cf.* Gilmore, *supra* note 93, at 222-23 (noting manhood's association with the unholy trinity of "one must impregnate women, protect dependents from danger, and provision kith and kin").

236. Eaton, *supra* note 228, at 192. *See also* Dowd, *Masculinities*, *supra* note 1, at 240.

homosexuality has long been understood as rooted in sexism and in the nullification of gender role expectations.[237]

These expectations are consistent with the only decision so far addressing child support between a gay couple, in which the court failed to conceptualize the non-biological partner as the legal father. The extreme facts at hand could easily have justified the imposition of an express child support obligation.

In this particular case, a homosexual couple achieved parenthood via surrogacy using the egg of an anonymous donor and a mixture of their own sperm. After a DNA test showed which partner was the biological father, the other partner used his sperm to fertilize a second egg from the same donor, ensuring half genetic relatedness between their children. Some time after the first child was born, the couple separated. The initial biological father sued his partner for child support after the latter denied any connection to the child he actively fathered through conception, pregnancy, and birth.[238]

Unlike the cases of the lesbian partners, in which the court buttressed its conclusion with several possible legal doctrines, in this case the court said it could conceive of no legal basis on which to predicate a support obligation for the non-biological father,[239] thus underscoring the importance of genetic paternity. Given our expectations of how hyper-masculinity should influence the courts' treatment of gay fatherhood, borne out by this case, I argue that the court helps to construct the "family man" by reference to compulsory heterosexuality. Consider, for example, Israeli courts' willingness to impose child support obligations (though tellingly not visitation rights) on *heterosexual* men even when they are not the biological fathers. Under Israeli law, a step-father is duty-bound—by virtue of his relationship with the mother—to support his step-children when their biological father is unavailable to do so for whatever reason.[240] While statutory law imposes this obligation only during the life of the step-father's marriage to the mother, a judicial ruling recently extended economic liability even past divorce and until the ex-stepchild concludes military service.[241] Judicial ruling has even extended the paternal child support duty to the case of a man merely cohabiting with a mother. In this recent case, a live-in boyfriend was ordered to pay child support for the twins

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237. Sylvia A. Law, *Homosexuality and the Social Meaning of Gender*, 1988 WIS. L. REV. 187, 195-96.

238. FC (Tel Aviv) 37675-05-13 John Doe v. John Doe [2014] (unpublished opinion of Judge Yehoram Shaked) (interim child support decision).

239. The family court squarely dismissed the petition for temporary child support, indicating that the petition is baseless. *Id.*

240. Amendment to Family Law (Support) Act, 5719-1959, LSI 276, art. 3(a); *see also* Ayelet Blecher-Prigat & Daphna Hacker, *Parents or Strangers: the Positive and Normative Legal Status of the Partners of Parents*, 40 HEBREW U. L. REV. 5, 37 (2001) (in Hebrew).

241. FA 47454-01-12 T.S. v. A.S. [2012] (unpublished opinion). In her child support suit, the mother in turn expectedly stressed to the court that the caretaking responsibilities fell exclusively on her shoulders. *Id.* § 2.

that his ex- girlfriend adopted during their intermittent, unsteady, and relatively short relationship.[242]

In the case of this "conscripted father," one cannot escape the feeling that the court circumvented both child support and adoption law to burden the man with unwanted paternal status because it sought to impose the traditional family structure of a breadwinning father and homemaking mother. Moreover, in keeping with the well-entrenched ideals of gendered family roles, when the court awarded (uncontested) custody to the mother, it did not even bother to stipulate visitation, noting that if the man desired to remain involved in the twins' lives, then he could separately petition to do so.[243]

The transfer of parental economic obligation from the child's mother to a legal stranger further unveils the law's ceaseless preoccupation with rigid gender role assignment. Since wage-earning activity does not conform with the traditional definition of a "good mother," the law insists on tracking down an approximate father figure to fill the role exclusively assigned to the "man" in the family: bringing home, in this case, the "kosher" bacon. Since the law's ideal family man is heterosexual and since economic provision has a central place in masculine identity and status, the law myopically refused to acknowledge the homosexual partner either as a father or as a bearer of child support obligations.

The concluding Part challenges this and the other ways the law continues to define paternal masculinity. It then proposes ways to reconstruct fatherhood with a new model that provides for engaged caretaking.

IV. TOWARD THE RECONSTRUCTION OF FATHERHOOD

Several areas of legal regulation effectively disenfranchise fathers as parents. Gender role stereotypes are socially ingrained and legally enforced and continue to shunt men away from nurturing roles. Until the institutional structures, legal doctrines, and cultural scripts that perpetuate traditional male norms are challenged, there is little hope for change. In Israel, redefining fatherhood requires redefining these deeply rooted concepts of masculinity.

This is not an easy or simple task; important tasks hardly ever are. I argue that the law must be employed as a pivotal facilitative tool to develop a new normative model of engaged fatherhood. While legal systems have done a great deal in eradicating barriers to female integration in the "male" sphere, they have done little to facilitate male entry into traditionally female roles. The law

242. FA (Haifa) 22050-06-11 S. v. R., §§ 6, 12, 16 [2012] (unpublished opinion). While the mother paid for the adoption primarily by herself (her boyfriend helped her only after she ran out of money), her boyfriend did support her through the adoption process, after she clarified that failing to do so would be a deal-breaker. *Id.* §3.

243. *Id.* at 14. This case was reaffirmed by the Israeli Supreme Court. *See* FA 4751/12 Ploni v. Plonit [2013] (unpublished opinion).

must change what it means to be a parent, and one way to do that is by supporting the emerging paradigm of the "New Father:" a man emotionally invested in his children's lives and actively involved in promoting their educational, cognitive, and emotional development.[244] In short, the "New Jew" should incorporate the "New Father" into its definition of masculinity.

A first step in this process, I argue, is to make parents equal before the law as ungendered bearers of legal rights and responsibilities. Child custody law must be reformed. Israel remains the only Western country embracing an unabashedly gender-based parental law. A legal policy that seeks to promote the project of reconfigured parenthood must abandon its preference for maternal caregiving and center instead on a gender-neutral rule that does not a priori treat fathers as second-class parents.

At first glance, it may appear that nothing short of a preference for joint physical custody and shared parenting would truly promote parental equality and stimulate social relationships between fathers and their children.[245] At a deeper look, however, this solution is misguided; a rule cannot go too far too quickly in its quest for social engineering in the interest of gender equality, especially in an area in which cultural norms overwhelm legal reforms.[246]

In my view, an ungendered custody rule in the form of a primary caretaker standard—one that does not confuse caretaking and economic support as equivalent contributions to the family—is the golden path between maternal custody and joint physical custody. To begin with, the legal articulation of caretaking expectations emphasizes important symbolic and incentive-driving values.[247] It signifies that a mere biological tie is insufficient to secure custody and control rights over children. Such a custody rule rewards demonstrated commitment to caretaking and encourages both parents to foster meaningful relationships with their children. The more a father interacts actively with his children's day-to-day lives, the more likely he will earn joint physical custody. In this way, the legal system may be able to effect changes even in intact families, not only in post-dissolution behavior.

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244. For the new model of masculinity and its increasing visibility in Israeli society and culture, see Lemish & Lahav, *supra* note 26, at 150, 155, 158 (discussing the "new-manist" also labeled as the "new man-as-nurturer," a champion of gender equality, emotionally expressive, involved in family life and in child-raising); and Hacker & Shamir, *supra* note 161, at 318 (noting the emergence of the "new father" in Israeli society and identifying this trend as a threat to men's place in the public and family life).

245. Martha Albertson Fineman, *Fatherhood, Feminism and Family Law*, 32 MCGEORGE L. REV. 1031, 1040 (2001).

246. *Id.* at 1036 ("[T]he statistics on reproductive, workplace and family behavior show that wide-sweeping and general, punitive measures enacted into law seem unlikely to cause significant change in behavior. . . . Law seems a feeble and inadequate tool for those who wish to challenge these emerging forms of family and norms of individual behavior.").

247. On the "profound symbolic power in signalling [sic] ratification of the parental role" and on fathers' need to have "their identity as a parent confirmed by the state," see Richard Collier, *Fathers' Rights, Gender and Welfare: Some Questions for Family Law*, 31 J. SOC. WELFARE & FAM. L. 357, 361-62 (2009).

Many have criticized the primary caretaker norm for being seductively neutral on its face yet grossly gendered in operation, merely a "thinly veiled return to the maternal preference standard."[248] Promoting children's best interests, rather than securing paternal equality, however, should be our primary objective.[249] A rebuttable presumption that children's welfare is best served by residing with the primary caretaker at the very least provides stability and continuity of care, as well as incentives to engaged parenthood.

Additionally, restructuring the custodial process in the direction of conferring full equality upon fathers must take into account the complexity of Israeli family law as a whole. Israeli women suffer from profound structural inferiority in a divorce regime governed by discriminatory religious law. For example, the female right to marital exit is dependent on spousal consent, which, as discussed, is subject to far-reaching abuse.[250]

Neutralizing child custody law by eliminating women's sole intrinsic advantage, without regard to the highly gendered parenting patterns of care in the family and without reforming the rest of the gendered system, may tilt the existing unbalance entirely against women. Any reform of child custody law, then, must be attuned to the larger social and legal context within which it operates, lest it be abused as another legal means by which men can extort women for custody rights, a phenomenon already a hallmark of Israel's family law system.[251]

Further, law can and should obligate parents to participate in educational programs and mandatory counseling sessions prior to divorce which teach non-custodial parents the importance of staying involved in their children's lives.[252]

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248. Levit, *supra* note 2, at 1076. *See also* MARTHA ALBERTSON FINEMAN, THE ILLUSION OF EQUALITY: THE RHETORIC AND REALITY OF DIVORCE REFORM, 111-12 (1991); Laura Sack, *Women and Children First: A Feminist Analysis of the Primary Caretaker Standard in Child Custody Cases*, 4 YALE J.L. & FEMINISM 291 (1992) (discussing the West Virginia and Minnesota standards in operation). *But see* Mary Becker, *Maternal Feelings: Myth, Taboo, and Child Custody*, 1 S. CAL. REV. L. & WOMEN'S STUD. 133, 192-96 (1992) (studying the thirty-five reported cases in West Virginia since the adoption of the primary caretaker standard, noting that "68% of the cases appealed involved fathers who received custody at the trial court level even though the mother seems to have been the primary caretaker and fit," and suggesting that the court remains biased against mothers when the father takes on significant care-taking duties if the mother is absent from her children's lives in some way or if the mother has had extramarital sex).

249. Fineman, *supra* note 245, at 1038.

250. Daphna Hacker & Ruth Halperin-Kaddari, *The Determining Rules in Custody Disputes: On the Danger of the Parental Sameness Illusion in a Gendered Reality*, HAIFA U.L. REV. 15, 70 (2012) (in Hebrew).

251. For the problem created by the abolition of the tender-years presumption even in secular western countries, see, for example, Martha Fineman, *Dominant Discourse, Professional Language, and Legal Change in Child Custody Decisionmaking*, 101 HARV. L. REV. 727, 737-40 (1988).

252. For example, in an effort to keep couples together and protect children from the consequences of divorce, a Kentucky circuit court required all divorcing parents to take a Catholic parental counseling program. A federal district court found the program to be constitutional. Kagin v. Kopowski, 10 F. Supp. 2d 756 (E.D. Ky. 1998). *See also* Paul R. Amato, *Good Enough Marriages: Parental Discord, Divorce, and Children's Long-Term Well-Being*, 9 VA. J. SOC. POL'Y & L. 71, 91-93 (2001) (recommending

Such a prerequisite to divorce would impart symbolic benefits, signaling that society acknowledges as irreplaceable male contributions to child rearing. An extensive body of research indicates that information-based and skills-based educational programs for divorcing parents have a positive influence on children's adjustment.[253] Children whose non-custodial parents maintain contact and provide them with emotional support and consistent discipline have fewer psychological and behavioral problems, do better in school, and exhibit higher self-esteem.[254] To date, the vast majority of American jurisdictions offer parent education programs; in many, attendance can be made compulsory by the courts,[255] and courts take compliance seriously.[256]

Child support law must concomitantly withdraw its wholesale support for the gender split in caregiving and wage-earning while restructuring ideals of masculinity and fatherhood. A system of child support incentivizing fathers to share child-rearing responsibilities would go a long way in improving children's well-being[257] and in stripping motherhood of its lethal impact on women's gender equality and place in society.[258]

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marital counseling for low-discord divorcing couples in order to further the best interests of the children).

253. *See* ALISON CLARKE-STEWART & CORNELIA BRENTANO, DIVORCE: CAUSES AND CONSEQUENCES 245 (2006); Robert L. Fischer, *Children in Changing Families: Results of a Pilot Study of a Program for Children of Separation and Divorce*, 37 FAM. & CONCILIATION CTS. REV. 240, 241-42 (1999); N. Thoennes & J. Pearson, *Parent Education in the Domestic Relations Court: A Multi-Site Assessment*, 37 FAM. & CONCILIATION CTS. REV. 195-218 (1999).

254. CLARKE-STEWART & BRENTANO, *supra* note 253, at 164; Paul R. Amato & Joan G. Gilbreth, *Nonresident Fathers and Children's Well-Being: A Meta-Analysis*, 61 J. MARRIAGE & FAM. 557 (1999). Indeed, when the quality of non-custodial parenting is controlled statistically, the divorce effects of the above-mentioned child outcomes are reduced or even eliminated. *See* Robert L. Simons, Christine Johnson & Frederick O. Lorenz, *Family Structure Differences in Stress and Behavioral Predispositions*, *in* UNDERSTANDING DIFFERENCES BETWEEN DIVORCED AND INTACT FAMILIES 45 (Ronald L. Simons & Assocs. eds., 1996).

255. *See* ARIZ. REV. STAT. ANN. §§ 25-351 to 25-353 (2015); ARK. CODE ANN. § 9-12-322 (2015); COLO. REV. STAT. § 14-10-123.7 (2015); CONN. GEN. STAT. ANN. § 46b-69b (West 2015); DEL. CODE ANN. tit. 13, § 1507(h) (2015); FLA. STAT. ANN. § 61.21 (West 2014); 750 ILL. COMP. STAT. ANN. 5/404.1 (West 2015); IOWA CODE § 598.15 (2010); KAN. STAT. ANN. § 60-1626(a)(4)(b) (West 2015); LA. REV. STAT. ANN. § 9:306 (2014); MD. CODE ANN., FAM. LAW § 7-103.2 (West 2015); MINN. STAT. ANN. § 518.157 (West 2015); MO. ANN. STAT. § 452.600 (2015); MONT. CODE ANN. § 40-4-226 (West 2015); 2007 NEB. REV. STAT. ANN. § 43-2928 (West 2015); N.H. REV. STAT. ANN. § 43:458-D (2015); N.J. STAT. ANN. § 2A:34-12.3 to 12.5 (West 2015); OKLA. STAT. tit. 43, § 107.2 (2015); OR. REV. STAT. § 3.425 (2007); TENN. CODE ANN. § 36-6-408 (2015); TEX. FAM. CODE ANN. § 105.009 (Vernon 2009); UTAH CODE ANN. § 30-3-11.3 (West 2015); VA. CODE ANN. § 16.1-278.15 (2015); W. VA. CODE ANN. § 48-9-104 (West 2015); WIS. STAT. § 767.401 (2009); WY. STAT. ANN. § 20-2-201(f) (West 2015). Programs authorizing judges to "order divorcing parents' participation in parenting classes" are already mandated by court rules in at least Alaska, California, Georgia, Indiana, Kentucky, Michigan, New Mexico, New York, Pennsylvania, Washington, and Wyoming. Tali Schaefer, *Saving Children or Blaming Parents? Lessons from Mandated Parenting Classes*, 19 COLUM. J. GENDER & L. 491, 495 (2010); *see* Susan L. Pollet & Melissa Lombreglia, *A Nationwide Survey of Mandatory Parent Education*, 46 FAM. CT. REV. 375 (2008).

256. Schaefer, *supra* note 255, at 496.

257. McCant, *supra* note 144, at 132 ("Fathering differs from mothering, and father nurturance contributes significantly to the social and intellectual growth of children"); Maldonado, *supra* note 139, at 983 (asserting public policy should incentivize paternal involvement, as it benefits children); Mandel

I submit that the phenomenon of gendered parenting may be ameliorated by adopting a "hybrid" system of child support.[259] A hybrid system would take into account the wage-earning and care-giving activities of both parents, requiring them to divide up these responsibilities in a "parenting plan," with the hopes of addressing the child's best interest in maintaining contact with both parents.[260] Including financial provision as part of a mother's normative role may also help undercut breadwinning as a major signifier of hegemonic masculinity. Non-financial care should be the equal responsibility of both mother and father to the extent of their abilities. Under such a system, Israeli men would feel compelled to take on some carework in order to be "good fathers" in the eyes of both the law and society. Further, fathers would be actively incentivized to take on carework by an important economic advantage: equitable apportionment of child support in light of shared caregiving responsibilities.[261] Fathers who fail to meet their visitation *obligations* would be legally liable for damages. This legal penalty sends a powerful declaration liberating men from their unidimensional identity as "total" workers.

The law might also create social norms of paternal involvement that stimulate community enforcement and self-sanctioning. Indeed, a mounting body of scholarship has documented the influence of family law in crafting social norms,[262] and other research supports the thesis that fathers become

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& Sharlin, *supra* note 180, at 80 (asserting children with unstable relationships with their non-custodial father are deprived of emotional and other support).

258. Feminist scholars in all fields have emphasized the link between gender-based caregiving and the devalued status of women. As Nancy Chodorow aptly put it: "[W]omen's motherhood and mothering role seem to be the most important features in accounting for the universal secondary status of women." Nancy Chodorow, *Family Structure and Feminine Personality, in* WOMAN, CULTURE, AND SOCIETY 45 (M.Z. Rosaldo & L. Lamphere eds., 1974); *see also* Roberts, *supra* note 156, at 511 (arguing that women benefit by sharing caregiving responsibilities, as it allows them free time, prevents burnout, and enables participation in the workforce), 511-12 (noting the importance of active fathers to children); Hacker & Halperin-Kadari, *supra* note 172, at 79 (asserting paternal involvement is indispensible for the ability of women to lead independent lives).

259. Roberts coined this expression, in the context of discussing the general scheme of American child support law. Roberts, *supra* note 156, at 509-10. For the details of such a scheme, see my proposal in Yefet, *supra* note 11.

260. Maldonado, *supra* note 139, at 954 (noting that the quality of parenting is higher when both parents take part in care work), 1002 (summarizing the empirical evidence that a father's involvement in child-care benefits all members of the family and even society generally).

261. Gaia Bernstein & Zvi Triger, *Over-Parenting*, 44 U.C. DAVIS L. REV. 1221, 1247 (2011) (discussing both a monetary rationale for mixing care with money as well as a social rationale of strengthening paternal involvement). It is noteworthy that while writing these lines, the Shifman Committee, appointed by the Israeli Minister of Justice to unify the principles used by courts when determining child support, submitted its recommendations to the Ministry of Law. The committee suggested something along the lines of my proposal, namely, rewarding fathers who actively participate in carework by reducing their child support obligations, with the hope of getting Israeli fathers more involved in their children's lives. *See Shifman Report*, *supra* note 142, at 63 (arguing reduction in child support is likely to provide a significant incentive for shared parental responsibility).

262. *See, e.g.*, ERIC A. POSNER, FAMILY LAW AND SOCIAL NORMS, IN THE FALL AND RISE OF FREEDOM OF CONTRACT 256, 268-72 (F.H. Buckley ed., 1999) (discussing the influence of social norms on marriage laws); Czapanskiy, *supra* note 175, at 1461 ("Fomenting change is an old and a legitimate role for law in the realm of family conduct as well as in the realm of other gendered relationships"),

disengaged parents partly because "they have internalized the message that their role after divorce is primarily economic."[263]

Drawing on the analysis of norms theorists, Professor Solangel Maldonado argues that once paternal contact is mandatory, then even with no or minimal legal enforcement "[t]he desire to avoid societal disapproval, along with internalization of the norm of involved fatherhood, might lead fathers to better parent their children."[264] By passing legislation requiring parents to spend time with their children, the law would express a consensus that the failure to do so is contrary to minimally acceptable paternal behavior and thus carries the threat of community disapproval.[265] This model of equality-based parenting is an important stepping-stone on the legal road to redefining fatherhood, breaking down traditional gender roles, and eradicating the sex segregation of care work and its adverse consequences.

Child support doctrine also dictates who is a parent and on what basis a father should be legally released, if at all, from his paternal responsibilities. As I argue, parentage policy is unduly driven by biology; a man who previously functioned as a social and support father is free under Israeli law to escape his established parenting relationship solely on the basis of genetic non-relatedness. Without jettisoning the biological factor entirely, I do think that a modern reconstruction of fatherhood should hold responsible as a legal father a man with an extended parenting relationship to the child in question. This doctrinal reconfiguration will not only secure continued financial support for children, but will also send an important message about the nature of fatherhood: a relationship revolving around nurture, rather than mere nature.

Finally, accomplishing structural and cultural change must yield reforms not only in family law, but also in employment law. Just as home roles must become de-gendered, so too must work roles. The dominant Israeli norm of the "total worker" should be replaced by a new norm of the "universal caregiver" or "dually responsible worker," and with it workplace changes that accommodate caregiving workers.[266] Legal literature is accordingly replete

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1481 ("The potential of the law to express a social norm as well as to make a difference in people's conduct is substantial"); Elizabeth S. Scott, *Social Norms and the Legal Regulation of Marriage*, 86 VA. L. REV. 1901, 1926 (2000) ("legal rules can clarify and announce the specific behavioral expectations embodied in social norms"); Sarah E. Waldeck, *Using Male Circumcision to Understand Social Norms as Multipliers*, 72 U. CIN. L. REV. 455 (2003) (arguing that the law can be used to change norms for circumcision).

263. Maldonado, *supra* note 139, at 984; *see also* Cynthia A. McNeely, *Lagging Behind the Times: Parenthood, Custody, and Gender Bias in the Family Court*, 25 FLA. ST. U. L. REV. 891, 895 (1998) ("by sending a distinct message to divorced fathers that they are not essential to the raising of children beyond supplying a percentage of their paychecks to the mother . . . and perhaps a couple of hours a week of 'visitation' . . . the state has encouraged divorced fathers to abandon true fatherhood").

264. Maldonado, *supra* note 139, at 1001.

265. *Id.* at 1007-08.

266. NANCY FRASER, JUSTICE INTERRUPTUS: CRITICAL REFLECTIONS ON THE "POSTSOCIALIST" CONDITION 61 (1997).

with proposals for domesticating the workplace[267] with family-friendly policies such as subsidized child care facilities, flexible workweeks,[268] legal protection for men exercising intensive fathering, and paid family leave for all workers.[269]

In Israel, taking leave is overwhelmingly gendered, with only 0.3 percent of fathers taking advantage of a measure formally available to both parents.[270] Realizing that this choice pattern is a significant impediment to the equal division of childcare responsibilities, many countries have revised their parental leave policies to provide gender-specific benefits to father care.[271] The Nordic countries, for example, use a "daddy quota" system in addition to maternal leave, offering state-paid paternal leave for several weeks of father care, a benefit forfeited if not taken.[272] This "daddy-leave" mechanism normalized men's caretaking responsibilities and has radically increased the caretaking participation rate of Swedish men, with eighty percent of fathers now taking some leave to provide childcare.[273] Some scholars go so far as to suggest legally *requiring* fathers to take parental leave, so as to ensure men's early and continued involvement with their children.[274]

Since hyper-masculine Israeli culture has confined childcare to a female ghetto, there is much to commend in the solution of *mandatory* paternal leave, at least as a temporary measure, in order to render father care an integral feature of masculinity. Indeed, cross-cultural evidence demonstrates that fathers almost universally fail to avail themselves of the benefits incentivizing active parenting.[275] Only once law has actively taken steps to endorse gender equality in parenting will equal caretaking become a real option for Israelis. Law must break from the rigid formulation that caretaking work marks men as inferior to those embracing hegemonic masculinity norms; mandatory paternity leave is the first step in such a break.

These legal vehicles are a preliminary blueprint for transforming normative understandings of the father figure in law and the status of fatherhood from secondary to co-equal parenting. To this extent they also constitute a first step

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267. Fineman, *supra* note 245, at 1048.

268. Vicki Shultz, *Life's Work*, 100 COLUM. L. REV. 1881, 1957 (2000). Israeli law in theory limits weekly work hours, yet it includes so many exceptions and is so rarely enforced that in practice the limitation is dead letter. *See* Renan-Barzilay, *supra* note 217, at 349 (2012).

269. Cahn, *supra* note 35, at 209, 218; Fineman, *supra* note 245, at 1048.

270. NOYA RIMALT, LEGAL FEMINISM FROM THEORY TO PRACTICE: THE STRUGGLE FOR GENDER EQUALITY IN ISRAEL AND THE UNITED STATES 183 (2010) (in Hebrew).

271. Eugenia Caracciolo di Torella, *New Labour, New Dads—The Impact of Family Friendly Legislation on Fathers*, 36 INDUS. L.J. 318, 323-24 (2007).

272. *See* Arianne Renan Barzilay, *Back to the Future: Introducing Constructive Feminism for the Twenty First Century—A New Paradigm for the Family and Medical Leave Act*, 6 HARV. L. & POL'Y REV. 407, 434 (2012); *see also* THE POLITICS OF PARENTAL LEAVE: CHILDREN, PARENTING, GENDER AND THE LABOUR MARKET (Sheila Kamerman & Peter Moss eds., 2009).

273. *See* Dowd, *supra* note 39, at 170. *See generally* ASA LUNDQVIST, FAMILY POLICY PARADOXES: GENDER EQUALITY AND LABOUR MARKET REGULATION IN SWEDEN, 1930-2010 (2011).

274. Martin H. Malin, *Fathers and Paternal Leave*, 72 TEX. L. REV. 1047 (1994).

275. Dowd, *supra* note 39, at 1050.

in promoting practices and policies of masculinity that comport with feminist objectives and gender equity.

CONCLUSION

Legal scholarship has done little to recognize and identify how strongly masculinities norms permeate existing law. This work has sought to fill this puzzling lacuna; it offers an account of the ways in which various doctrines prescribe what it means to be a Jewish man in Israel. In particular, I aimed to reconsider the ideological foundations of the legal parenting regime through the lens of masculinities theory. I showed that Israeli law, despite its progressive image, in fact polices gender role conformity, reinforcing dominant and essentialist notions of manhood and punishing those who do not exhibit hegemonic masculinity.

The Israeli model of Jewish masculinity must be "outed" as a constraining construct operating with an impoverished view of men that limits their choices even as it privileges them. In this restricting scheme, fatherhood is defined in strictly bio-economic terms, with breadwinning at the heart of men's masculinity and carework as a core violation of required hyper-masculine virility. Israeli law constructs fatherhood as an undefined, voluntary role with no behavioral expectations post-divorce. It entrenches norms of unengaged fathering, that is, economic contribution without physical or emotional presence in children's lives. By envisioning nurturing fatherhood as oppositional to manhood, the law has served as an active accomplice to the Zionist master plan of "manning up" the effeminate "old," Diaspora Jew and transforming the "perverse" gender role reversal allegedly characterizing exilic Jewish society.

The legal barriers to more engaged father care are especially alarming given the powerful status that law plays in Israeli society and in shaping the social identity of its members.[276] In this way, law contributes not only to the hegemony of men, but also to the subordination of women and of non-hegemonically masculine men.

Israeli law must get out of the business of distorting men's choices and reinforcing outmoded gender roles that make it unacceptable for men to participate in family life in any meaningful sense. Men will not be able to actively resist the masculine embargo on nurturing so long as the law penalizes them for failing to abide by the dominant rules of manhood. Instead, legal ideology must reimagine masculinity in a positive, egalitarian way and help recast ingrained concepts of what it means to be a man. Israeli law therefore

276. Triger, *supra* note 48, at 18. On the power of law in defining identities, see Menachem Mautner, *The Invisible Law*, 16 ALPAYIM: MULTIDISCIPLINARY J. CONTEMP.THOUGHT & LITERATURE 45, 47 (1998) (in Hebrew).

requires an ideological shift to adopt a model of more engaged fatherhood, one that includes nurture as well as nature and makes necessary the active participation of men in families.

Structuring fatherhood to include engaged, involved, nurturing parenting is not only important for fathers and children; it is important for feminism. Only when men have become active fathers in self-identity and societal expectations will women's substantive equality in both the home and the workplace may finally be within reach.