

An International Appeal from the Commission on Parenthood's Future  
Elizabeth Marquardt, Principal Investigator

## **The Revolution in Parenthood**

The Emerging Global Clash Between Adult  
Rights and Children's Needs



**Institute for American Values**  
**Institute for Marriage and Public Policy**  
**Institute for the Study of Marriage, Law, and Culture**  
**Institute of Marriage and Family Canada**

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**Note**

This report, originally written in English, has been translated into French to aid in the Canadian release. The Executive Summary in French is included with this English version of the report. The full report in French can be downloaded from: <http://www.americanvalues.org>.

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## **About the Commission on Parenthood's Future**

The author of this report is a member of the Commission on Parenthood's Future. The Commission is an independent, nonpartisan group of scholars and leaders who have come together to investigate the status of parenthood as a legal, ethical, social, and scientific category in contemporary societies and to make recommendations for the future. Commission members convene scholarly conferences, produce books, reports, and public statements, write for popular and scholarly publications, and engage in public speaking.

## **The Revolution in Parenthood**

### The Emerging Global Clash Between Adult Rights and Children's Needs

#### **Executive Summary**

Around the world, the two-person, mother-father model of parenthood is being fundamentally challenged.

In Canada, with virtually no debate, the controversial law that brought about same-sex marriage quietly included the provision to erase the term “natural parent” across the board in federal law, replacing it with the term “legal parent.” With that law, the locus of power in defining who a child's parents are shifts precipitously from civil society to the state, with the consequences as yet unknown.

In Spain, after the recent legalization of same-sex marriage the legislature changed the birth certificates for all children in that nation to read “Progenitor A” and “Progenitor B” instead of “mother” and “father.” With that change, the words “mother” and “father” were struck from the first document issued to every newborn by the state. Similar proposals have been made in other jurisdictions that have legalized same-sex marriage.

In New Zealand and Australia, influential law commissions have proposed allowing children conceived with use of sperm or egg donors to have three legal parents. Yet neither group addresses the real possibility that a child's three legal parents could break up and feud over the child's best interests.

In the United States, courts often must determine who the legal parents are among the many adults who might be involved in planning, conceiving, birthing, and raising a child. In a growing practice, judges in several states have seized upon the idea of “psychological” parenthood to award legal parent status to adults who are not related to children by blood, adoption, or marriage. At times they have done so even over the objection of the child's biological parent. Also, successes in the same-sex marriage debate have encouraged group marriage advocates who wish to break open the two-person understanding of marriage and parenthood.

Meanwhile, scientists around the world are experimenting with the DNA in eggs and sperm in nearly unimaginable ways, raising the specter of children born with one or three genetic parents, or two same-sex parents. Headlines recently announced research at leading universities in Britain and New Zealand that could enable same-sex couples or single people to procreate. In Britain, scientists were granted permission to create embryos with three genetic parents. Stem cell research has introduced the

very real possibility that a cloned child could be born—and the man who pioneered in vitro fertilization (IVF) treatment has already said in public that cloning should be offered to childless couples who have exhausted other options. The list goes on.

Nearly all of these steps, and many more, are being taken in the name of adult rights to form families they choose. But what about the children?

This report examines the emerging global clash between adult rights and children's needs in the new meaning of parenthood. It features some of the surprising voices of the first generation of young adults conceived with use of donor sperm. Their concerns, and the large body of social science evidence showing that children, on average, do best when raised by their own married mother and father, suggest that in the global rush to redefine parenthood we need to call a time-out.

Right now, our societies urgently require reflection, debate, and research about the policies and practices that will serve the best interests of children—those already born and those yet to be born. This report argues that around the world the state is taking an increasingly active role in defining and regulating parenthood far beyond its limited, vital, historic, and child-centered role in finding suitable parents for needy children through adoption. The report documents how the state creates new uncertainties and vulnerabilities when it increasingly seeks to administer parenthood, often giving far greater attention to adult rights than to children's needs. For the most part, this report does not advocate for or against particular policy prescriptions (such as banning donor conception) but rather seeks to draw urgently needed public attention to the current revolutionary changes in parenthood, to point out the risks and contradictions arising from increased state intervention, and to insist that our societies immediately undertake a vigorous, child-centered debate.

Do mothers and fathers matter to children? Is there anything special—anything worth supporting—about the two-person, mother-father model? Are children commodities to be produced by the marketplace? What role should the state have in defining parenthood? When adult rights clash with children's needs, how should the conflict be resolved? These are the questions raised by this report. Our societies will either answer these questions democratically and as a result of intellectually and morally serious reflection and public debate, or we will find, very soon, that these questions have already been answered for us. The choice is ours. At stake are the most elemental features of children's well-being—their social and physical health and their moral and spiritual wholeness.



## Revolution de la filiation

### Conflit émergent entre les droits des adultes et les besoins des enfants

#### Sommaire Exécutif

Aujourd'hui, le modèle parental composé d'un père et d'une mère est assailli dans son principe même partout dans le monde.

Au Canada, presque sans débat, la loi controversée ratifiant le mariage entre partenaires du même sexe introduisait sans bruit la stipulation éliminant le terme "parent naturel" de toutes les lois fédérales, pour le remplacer par le terme "parent légal". Ce changement déplaça brusquement le pouvoir de définir qui sont les parents d'un enfant, l'enlevant à la société civile pour l'accorder à l'État, avec des conséquences encore inconnues.

En Espagne, après la légalisation récente du mariage homosexuel, le corps législatif a changé les actes de naissance de tous les enfants espagnols, y inscrivant "progéniteur A" et "progéniteur B" au lieu de "mère" et "père". Ce changement efface les mots "mère" et "père" du premier document émis à chaque enfant par l'État.

En Nouvelle-Zélande et en Australie, des instances législatives influantes ont proposé que l'on autorise les enfants conçus en utilisant du sperme ou des ovules de donneurs à avoir trois parents. Mais ni l'un ni l'autre des deux pays ne s'est penché sur l'éventualité très réelle que ces trois parents pourraient se séparer et faire de l'intérêt de l'enfant un sujet de litige.

Aux États-Unis, les tribunaux décident souvent qui sont les parents légaux, parmi les nombreux adultes impliqués dans le projet parental, dans la conception, la naissance et l'éducation d'un enfant. On voit de plus en plus souvent les juges de plusieurs États recourir au concept de parent "psychologique" pour accorder le statut de parent légal à des adultes sans aucun lien de parenté, de mariage ou d'adoption avec l'enfant. Dans certains cas, ces jugements ont été prononcés malgré l'opposition des parents biologiques de l'enfant.

De plus, les réussites obtenues aux États-Unis dans le débat sur le mariage homosexuel ont encouragé les adeptes du mariage en groupe, qui désirent abolir la signification du mariage et de la filiation selon lesquels ces termes s'appliquent à deux personnes.

En même temps, des scientifiques dans le monde entier effectuent des expériences invraisemblables sur l'ADN des ovules et du sperme, permettant d'imaginer des

enfants nés avec un seul ou trois parents génétiques, ou avec deux parents du même sexe. Les gros titres des journaux annonçaient récemment des recherches menées par de grandes universités en Angleterre et en Nouvelle-Zélande, dont le but est de permettre à des couples du même sexe et à des personnes célibataires de procréer. En Angleterre, on a autorisé les scientifiques à créer des embryons ayant trois parents génétiques. La recherche sur les cellules souches a introduit la possibilité très réelle de voir naître un de ces jours un enfant cloné; le scientifique à l'origine de la fertilisation in vitro (comme traitement de l'infertilité) a déjà affirmé en public que le clonage devrait être offert à des couples sans enfants pour qui les autres alternatives sont restées inefficaces. Et ainsi de suite.

Presque toutes ces décisions, comme beaucoup d'autres, ont été prises au nom des droits des adultes à créer les familles qu'ils désirent. Mais qu'en est-il des enfants?

Ce rapport examine le conflit mondial émergent entre les droits des adultes et les besoins des enfants dans les nouvelles définitions du statut parental. Le rapport fait entendre les voix surprenantes de la première génération de jeunes adultes conçus en ayant recours au sperme de donneurs. Leurs préoccupations, ainsi que les données abondantes en sciences sociales indiquant qu'en général les enfants se portent le mieux quand ils sont élevés par leurs propres mères et pères, suggèrent qu'il serait utile de marquer un temps d'arrêt dans la course mondiale vers la redéfinition du parent.

Aujourd'hui, il est urgent pour nos sociétés de réfléchir, de débattre et de mener des recherches concernant les politiques et les pratiques qui serviront le mieux les intérêts des enfants—ceux qui sont déjà nés et ceux qui naîtront. Ce rapport fait valoir le fait que partout dans le monde l'Etat prend un rôle de plus en plus actif dans la définition et la réglementation du rôle parental (bien au-delà de sa fonction historique, vitale et limitée, axée sur l'enfant, consistant à trouver des parents appropriés pour les enfants qui en ont besoin). Le rapport décrit la manière dont l'Etat crée de nouvelles incertitudes et vulnérabilités lorsqu'il tente de régir la filiation, souvent en portant une plus grande attention aux droits des adultes qu'aux besoins des enfants. En général, le rapport ne s'exprime ni pour ni contre des politiques particulières (interdire la conception à l'aide de donneurs, par exemple); il essaie plutôt d'attirer l'attention publique—dont on a un besoin urgent—sur les changements révolutionnaires s'appliquant au statut parental, de souligner les risques et les contradictions découlant d'une intervention étatique accrue, et d'insister que nos sociétés entreprennent immédiatement un débat dynamique axé sur l'enfant.

Les mères et les pères sont-ils importants pour les enfants? Le modèle mère-père offre-t-il des avantages qui méritent d'être appuyés? Les enfants sont-ils des biens à produire pour le marché? Quel rôle devrait-on accorder à l'État dans la définition du statut parental? Lorsqu'il y a conflit entre les besoins des enfants et les droits des adultes, comment doit-on le résoudre? Ce rapport se penche sur ces questions. Nos



sociétés se trouvent face à un choix: ou bien elles répondent à ces questions de manière démocratique, après un sérieux examen intellectuel et moral et des débats publics, sans quoi en peu de temps nous nous apercevrons qu'on a répondu à ces questions à notre place. Il y va des aspects essentiels du bien-être des enfants—leur santé physique et sociale, et leur intégrité morale et spirituelle.

Vous trouverez une traduction française du rapport en consultant le site <http://www.americanvalues.org>.

## Introduction

**M**ANY CHANGES in marriage, reproduction, and family life in recent years have had one feature in common: They have pushed the boundaries on who is called a child's parent. Courts and the culture have at various times determined all kinds of people to be parent figures in children's lives, including stepparents, parents' unmarried partners, sperm donors, surrogate mothers, and even extended family members or close family friends.

This broadening of the term "parent" first arose amid the steep rise in single-parent childbearing and as a result of the divorce revolution. But more recently—indeed, many important developments have taken place in recent *months*—the redefinition of parenthood is taking new forms as cultural attitudes continue shifting; as reproductive technologies advance, access expands, and science continues pushing the boundaries on baby-making; as increasing numbers of same-sex couples are openly raising children, with many of them also advocating for marriage rights; as new players enter the marriage debate, including advocates of group marriage; and as the law struggles to catch up, often creating as many problems as it resolves.

Rather than striving to link the man and woman who conceive, bear, and raise a child into one unit called the child's "parents," today's trend toward redefinition separates genetic, gestational, and social parenthood into increasingly fragmented activities and separate legal terms.<sup>1</sup> In nations throughout the West and beyond, expert commissions, courts, legal scholars, and medical groups are leading the way in redefining parenthood, almost entirely without awareness of or influence from other disciplines and the broader public. While the state has a vital role to play in finding parents for needy children through adoption, today in many nations the state is creating powerful new uncertainties and vulnerabilities as it seeks to redefine parenthood for far broader categories of children.

Right now, the needs of children—those born and those yet to be born—are being threatened by policies and practices that are transforming and fragmenting the meaning of parenthood.

## Redefining Parenthood—What's Happening Around the World Right Now

Events that form a revolutionary redefinition of parenthood are proceeding at break-neck speed around the world.

In Canada, the law that recently legalized same-sex marriage nationally also quietly erased the term "natural parent" across the board in federal law, replacing it with the term "legal parent."<sup>2</sup> With that provision, the federal understanding of

parenthood for every child in the nation was changed in order to bring about the hotly-debated legalization of same-sex marriage.

Also in Canada, in an amazingly contradictory pair of moves, in some provinces it is now the right of an adopted child to know the identity of his or her biological parents; whereas in the case of children conceived by sperm or egg donors, revealing to the child the identity of his or her biological parents is a federal crime, punishable by a fine, imprisonment, or both.

In Spain, after the recent legalization of same-sex marriage the National Civil Registry struck the words “mother” and “father” from the first document issued to every newborn by the state. Instead, all birth certificates will now read “Progenitor A” and “Progenitor B.”<sup>3</sup>

At the same time and in a strange coincidence, law commissions in three other nations released reports in the spring of last year on assisted reproductive technologies. Each report makes radical headway in redefining parenthood.

In a report on “New Issues in Legal Parenthood,” the Law Commission in New Zealand made the unprecedented proposal of allowing children conceived with donor sperm or eggs to have three or more legal parents, with sperm or egg donors allowed to “opt in” to parenthood if they wish.<sup>4</sup>

In Australia, the Victoria Law Reform Commission proposed that access to donor insemination services be expanded to same-sex couples and singles, as is currently allowed in many nations including the United States (but which remains illegal in a number of European and other nations). Their rationale was striking. The commission argued that expanding donor insemination access to same-sex couples and singles is vital because it will reduce social discrimination against children raised in these kinds of families.<sup>5</sup> In a follow-up report, this commission also proposed that sperm and egg donors be allowed to “opt in” as a child’s third legal parent.

At the same time, in Ireland the Commission on Human Assisted Reproduction stunned many by proposing that couples who commission a child through a surrogate mother should automatically be the legal parents of the child, leaving the woman who delivers the baby with absolutely no legal standing or protection should she change her mind.<sup>6</sup> A dissenting member of the commission warned ominously, “If the surrogate mother resisted [handing over the baby], reasonable force could be used.”<sup>7</sup>

Meanwhile, in India new guidelines on assisted reproductive technology issued in June of 2005 by the Indian Council of Medical Research state that “the child born through the use of donor gametes [i.e., sperm or eggs] will not have *any right whatsoever* to know the identity of the genetic parents.” The local news headline stated

the new rules “go a long way in curbing exploitation”—viewing the matter entirely from the point of view of adults who give or receive sperm or eggs, but not from the perspective of children who will be forever barred from knowing where they come from.<sup>8</sup>

Other steps governments are taking signal a greatly heightened level of state intervention and increasing control over reproduction and family life.

In Britain, a recent law banning donor anonymity caused a purported drop in the number of persons willing to donate sperm or eggs.<sup>9</sup> Soon thereafter the government health service began an active campaign to recruit sperm and egg donors, no longer just *allowing* the planned conception of children separated from one or both biological parents, but now very intentionally promoting it.<sup>10</sup>

In another example of active state support, in high-tax Denmark the state subsidizes the practice of sperm donation by allowing the income earned by sperm donors to be tax-exempt. The Danish company Cryos, one of the world’s largest sperm banks, ships almost three-quarters of its sperm to individuals and couples overseas—all with the implicit support of the Danish taxpayer.<sup>11</sup> And in a recent, dramatic step, the Danish parliament narrowly passed a law that gives lesbian couples and single women the right to obtain free artificial insemination at publicly-funded hospitals.<sup>12</sup>

In Vietnam, the state supported hospital is running short of voluntary sperm donors. It is now considering setting up a community sperm bank in which those who request donor sperm must supply a family member or friend who will donate sperm to the bank for use by another couple. The increasing demand for sperm comes from “families where husband and wife are white collar workers, and single women who want a baby but wish to remain unmarried.”<sup>13</sup>

In Australia, a law passed in 1984 that allows sperm donors to contact their over-18 offspring has now raised the prospect that, starting this year, young adults who were conceived using donor sperm might receive a letter from the state alerting them to the sperm donor’s wish to contact them. In Australia, as elsewhere, most young people who were conceived with donor sperm were never told the truth by their parents.<sup>14</sup> To help offset the potential shock, the state government in Victoria has proposed a public advertising campaign warning all young adults that they could be contacted by a sperm donor father they never knew about.<sup>15</sup>

Meanwhile, in the United States the field of reproductive technology continues in an almost entirely unregulated environment. Agonizingly difficult decisions are often left to judges in local jurisdictions (with these cases sometimes rising to state supreme courts). These courts all too frequently must decide who a child’s parents are, picking and choosing among the many adults who might be involved in planning, conceiving, birthing, and raising the child.

Recently the California State Supreme Court heard three cases from lesbian couples who used sperm donors to have children and then split up. In these cases the non-biological mother figure (none of whom had adopted the child) was either denied access to the child or wished to have no further financial obligations to the child. The courts ruled in all three cases that the non-biological mother figure is like a child's father and should be granted full parental status and held to the same standard of rights and responsibilities.<sup>16</sup> The outcome has potentially far-reaching implications not just for same-sex couples but for the many heterosexual couples in stepfamilies<sup>17</sup>, as well as those who might use reproductive technologies or temporarily raise children together without marriage, adoption, or other legal arrangements.

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In Erie County, Pennsylvania, a judge recently had to decide parentage in a case in which a surrogate mother carried triplets for a 62-year-old man and his 60-year-old girlfriend. When the couple failed to pick up the infants, the hospital initiated steps to put them in foster care. In response, and eventually with the judge's approval, the surrogate mother took the children home and began raising them as her own. But the commissioning couple continues to fight for access to the children (and the 62-year-old man has been ordered to pay child support), while the college student who contributed her eggs for their conception is asserting her parental rights as well.<sup>18</sup>

In another case now before the Pennsylvania Supreme Court, a sperm donor was ordered by a lower court to pay child support for twins conceived by in vitro fertilization. The lower court said the mother and sperm donor had wrongly bargained away the twins' rights in agreeing that the sperm donor would not have responsibilities for them. The high court is now being asked to overturn that ruling.<sup>19</sup>

In response to these two cases lawmakers in Pennsylvania convened a joint subcommittee on assisted reproductive technologies. An attorney who sits on the subcommittee said, "It's becoming common in today's society for a sperm donor, an egg donor or a surrogate mother to be used in family-building, and it's in the best interest of everyone in this state to create a definitive pronouncement of who is a legal parent and define the rights and responsibilities of those parents."<sup>20</sup> The article reporting these developments framed the issue solely as a matter of protecting the rights of adults including egg and sperm donors, surrogate mothers, and legal parents. There was no consideration by the reporter of how these decisions might affect children.

In Ohio, a recently proposed bill addresses the growing practice of "embryo adoption," in which a couple with an unused embryo created for infertility treatment donates the embryo to another couple, who implant it in the woman and raise the resulting baby as their own. The bill defines the birth mother, not the biological

mother, as the legal mother of the child, and says that the husband of the birth mother who consents to the embryo adoption is the legal father.<sup>21</sup>

While such rulings and proposals might bring clarity in specific scenarios, they also create astonishing new uncertainties and questions for case law as an almost unimaginable range of adults—from a sperm donor to the husband of a woman implanted with someone else’s embryo to a surrogate mother or egg donor and even a parent’s ex-girlfriend or ex-boyfriend—can be designated the legal parent of a child.

At the same time, the active public debate about legalizing same-sex marriage and the increasing visibility of same-sex couples raising children contribute to new uncertainties about the meaning of parenthood. These new uncertainties potentially affect many children, not just the relatively small number of children raised by gay and lesbian people.

In Massachusetts, nearly three years ago, a 4-3 decision by the State Supreme Judicial Court legalized same-sex marriage. (It is notable that among all the laws, rulings, and proposals discussed in this report, legalized same-sex marriage in Massachusetts is among the very oldest.) In response to that court decision, the State Department of Public Health changed the standard marriage certificate to read “Party A” and “Party B,” instead of “husband” and “wife,” and proposed amending birth certificates used for all children in Massachusetts to read “Parent A” and “Parent B” rather than “mother” and “father.”<sup>22</sup> As in Canada and Spain, once same-sex marriage is legalized some advocates immediately argue that legal understandings of parenthood for all children must change, even to the point of erasing the words “mother” and “father” from the foundational legal document issued to all children by the state.<sup>23</sup>

In fact, same-sex couples, adoptive parents, and singles and infertile couples using donors routinely petition to have one or both biological parents left off the birth certificate—and even to have non-biological parents included without going through the process of adoption. In Quebec, when a woman in a same-sex civil union gives birth, her female partner is presumed to be the father and can be registered as the father on the child’s birth certificate.<sup>24</sup> A similar ruling was recently made in Ontario, with the judge noting that the testimony of non-biological mother figures who have not been automatically recorded on birth certificates “reveals a lot of pain” and that some find the requirement to adopt the child “immoral.”<sup>25</sup> The state of California allows a “second mother” to be entered on the birth certificate as the child’s father. Last year, a New Jersey judge ruled for the first time in that state that the same-sex partner of a woman who conceives with donor sperm has an automatic right to be listed as a birth parent on the child’s birth certificate without having formally to adopt the child, just as the husbands of women who use donor sperm are listed.<sup>26</sup> Earlier this year, Virginia issued a birth certificate to a lesbian adoptive couple that reads “Parent 1” and “Parent 2” after the couple rejected having one of their names put in the blank for “father.”<sup>27</sup> A similar suit was just filed in Oregon.<sup>28</sup> More are likely.



Around the world, the state is a fast-growing, active player in the field of redefining parenthood. This redefinition increasingly emphasizes adults' rights to children rather than children's needs to know and be raised, whenever possible, by their mother and father. The state is becoming routinely involved in the practices of regulating, apportioning, and resolving disputes involving fertility and parenthood. This global shift is encountering active resistance in only a few places.

Perhaps the most surprising development is in France where a "Parliamentary Report on the Family and the Rights of Children," published in January 2006, took a radically different stance. The report's authors note critically that "the desire for a child seems to have become a right to a child" and argue "when children's lives are at issue, legislators must act very cautiously and calmly seek social consensus...." The report's authors recommend denying the legalization of same-sex marriage, citing concerns about the identity and development of children when the law creates a "fictitious filiation" or a situation in which there are "two fathers, or two mothers—which is biologically neither real nor plausible." Citing the "precautionary principle,"<sup>29</sup> the report's authors conclude that there must continue to be a medical justification for assisted procreation "under the rubric of 'a father, a mother, a child,'" and that the ban on surrogacy should stand.<sup>30</sup>

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In another notable development, Italy's voters last summer defeated a referendum that would have loosened their restrictive fertility law. The law that was upheld bans the use of donor sperm or eggs and allows assisted reproductive technology only for married couples. In a somewhat less stringent example, Taiwan's cabinet last year approved an assisted reproductive technology law that restricts the use of such technology to infertile couples, bans receiving donor sperm and eggs from close relatives, and does not allow sperm or eggs from the same donor to be used by more than two couples. But examples like these are rare.<sup>31</sup>

## **How the Global Redefinition of Parenthood Threatens Children's Identity**

Why should we be concerned about the many rulings, laws, and proposals around the world that are aimed at redefining parenthood?

A good society protects the interests of its most vulnerable citizens, especially children. Right now, the institution that is most core to children's very survival—that of parenthood—is being fundamentally redefined with the state giving its implicit support and at times leading the way. In law and culture, parenthood is increasingly understood to be an institution oriented primarily around adults' rights *to* children

rather than children's need *for* their mother and father. These extraordinary moves are being made largely absent any real public awareness or debate.

The common thread running through many of these decisions is the adult right to a child. These rights claims are important. The desire for a child is a powerful force felt deep in the soul. The inability to bear a child of one's own is often felt as an enormous loss, one that some grieve for a lifetime. These desires must be responded to with respect and compassion. The claim that medicine and society should help those who cannot bear children is a legitimate one.

But the rights and needs of adults who wish to bear children are not the only part of the story.

Children, too, have rights and needs. For example, the United Nations Convention on the Rights of the Child, ratified in 1989, states that "the child shall...have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents."<sup>32</sup> The authors of the convention understood several key features necessary to human identity, security, and flourishing—having a name, being a citizen of a nation whose laws protect you, and, whenever possible, being raised by the two people whose physical union made you.

Adults who support the use of new technologies to bear children sometimes say that biology does not matter to children, that all children need is a loving family. Yet biology clearly matters to the adults who sometimes go to extreme lengths—undergoing high-risk medical procedures; procuring eggs, sperm, or wombs from strangers; and paying quite a lot of money—to create a child genetically related to at least one of them. In a striking contradiction, these same people will often insist that the child's biological relationship to an absent donor father or mother should not really matter to the child.

Of course, there is a very real and urgent role for the state to play in defining parenthood. Some biological parents present a danger to their children or are otherwise unable to raise them. Adoption is a pro-child social institution that finds parents for children who desperately need them. Adoption is a highly admirable expression of altruistic love, a kind of love that transcends our hardwired tendencies to protect our blood relations above all others. But the existence of legal adoption was never intended to support the argument that children don't care who their fathers and mothers are, or to justify the planned separation of children from biological mothers and fathers before the children are even *conceived*.

Certainly, biology is not everything. It does not and should not determine the full extent or depth of human relationships. Biological parents are tragically capable of harming their children, and some children are better off removed from these parents (though, as we will see, children on average are far safer with their biological

parents than with unrelated adults). But the actions and testimony of children and adults often powerfully suggest that biology does matter.

In the current rush to redefine parenthood, we must stop to ask critical, child-centered questions: Are children's understandings of parenthood as flexible as those who pose these issues mainly as a matter of adult rights believe them to be? How do children feel about the brave new world of parenthood? Does how they feel matter?

## **The Child's Point of View**

### **Emerging Voices from Children**

Children raised without their own married mother and father often have perspectives about their lives that are radically different from how the legal scholars, courts, and would-be parents expected they would feel. For example, studies on the inner lives of children of divorce are showing an enormous downside for children that was never considered in the heady, early days of the no-fault divorce revolution.<sup>33</sup>

To be perfectly clear, the question is *not* whether children love the parents who raise them. Children almost universally and unquestioningly love their parents, whether their parents are married, divorced, single, gay or straight. Rather, the question is how children feel and how they make sense of their identities when their mother or father (or both) is absent from their daily lives.

The first generation of donor-conceived children who are now coming of age form a remarkable case study to explore this question. Most in this first generation were conceived by married heterosexual couples using donor sperm. Anecdotally, many are now speaking out about the powerful impact on children's identity when adults purposefully conceive a child with the clear intention of separating that child from a biological parent.<sup>34</sup> These young people often say they were denied the birthright of being raised by or at least knowing about their biological fathers. They say that this intentional denial profoundly shapes their quest to understand who they are.

Donor-conceived teenagers and adults are forming organizations,<sup>35</sup> are frequently quoted in news articles,<sup>36</sup> and are using the Internet to try to contact their sperm donors and find half-siblings conceived with the same sperm.<sup>37</sup> They hail from the United States, Canada, Australia, Britain, Japan, and elsewhere. Numbers are hard to come by, but estimates are that the number of children now born in the U.S. each year through artificial insemination range from 30,000 to 75,000 and that about 3,000 each year are conceived using donor eggs.<sup>38</sup> While the numbers arguably are small,

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*Of course, there is an urgent role for the state to play in defining parenthood through adoption.*

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they are growing, and the stories these young people tell raise questions not only about their own experience but also about the prospects for the next generation of children born of still more complex reproductive technologies.

Donor-conceived young people point out that the informed consent of the most vulnerable party—the child—is not obtained in reproductive technology procedures that intentionally separate children from one or both of their biological parents. They ask how the state can aid and defend a practice that denies them their birthright to know and be raised by their own parents and that forcibly conceals half of their genetic heritage. Some call themselves “lopsided” or “half adopted.”<sup>39</sup> At least one uses the term “kinship slave.”<sup>40</sup> Some born of lesbian or gay parents call themselves “queer spawn,” although others in the same situation find the term offensive.<sup>41</sup> No studies have been conducted focusing on these young people’s long-term emotional experience.<sup>42</sup> Clearly, rigorous long-term studies need to be done. For now, we should listen to their compelling voices.

Narelle Grech, an Australian donor-conceived woman in her early twenties, asks, “How can you create a child with the full knowledge that he or she will not be able to know about their history and themselves?” She wonders what social message the practice of donor conception gives young men: “Will they think it’s OK to get a woman or girl pregnant and that it would be OK to walk away from her, because after all, biology doesn’t matter?”

A fellow Australian, Joanna Rose, asks why everyone “flips out” when the wrong baby is taken home from the hospital, yet assumes that donor-conceived children are just fine. She argues: “Our need to know and be known by our genetic relatives is as strong and relevant as anyone else’s.” She writes, movingly, “I believe that the pain of infertility should not be appeased at the expense of the next generation.”<sup>43</sup>

In interviews, donor-conceived young adults often say something like this: My sperm donor is “half of who I am.” One young woman known as Claire is believed to be the first donor offspring to benefit from open-identity sperm donation and have the ability to contact her father upon turning 18. She says she wants to meet her donor because she wants to know “what half of me is, what half of me comes from.”<sup>44</sup> Eighteen-year-old Zannah Merricks of London, England says, “I want to meet the donor because I want to know the other half of where I’m from.”<sup>45</sup> Lindsay Greenawalt, a young woman from Canton, Ohio who is seeking information about her sperm donor, says, “I feel my right to know who I am and where I come from has been taken away from me.”<sup>46</sup>

Eve Andrews, a 17-year-old in Texas, plans to ask the California sperm bank that aided in her conception to forward a letter to her donor when she turns 18. “There’s a lot of unanswered questions in my life and I guess I want the answers,”

she explains. By contrast, her 51-year-old mother, interviewed for the same story, says, “As a woman dealing with the prospect of infertility, all you want is that baby.... It never even occurred to me this child might want to find her biological father someday.”<sup>47</sup>

One young man, a 31-year-old doctor in Japan, learned that he was conceived by donor sperm when he examined his parents’ white blood cell group while studying medicine. “The most painful thing was the fact that my parents didn’t tell me for 29 years,” he said. “Unless I was told by my parents, I couldn’t even exercise my right to know my biological origin.”<sup>48</sup>

A 14-year-old girl in Pennsylvania wrote to Dear Abby after finding out she was conceived with donor sperm. In just a few sentences she identified some of the enormous identity issues that confront donor-conceived young people and that are now a challenge to our society. She wrote: “It scares me to think I may have brothers or sisters out there,<sup>49</sup> and that he [my father] may not care that I exist.” This young teenager, struggling alone with feelings of abandonment, grief, and confusion, poignantly challenged the current legal and social position on this issue: “I don’t understand why it’s legal to just donate when a child may be born.”<sup>50</sup>

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*Donor-conceived young adults often say something like this:*

*My sperm donor is  
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Some observers respond to the voices of donor-conceived adults by saying that there is an inherent contradiction in their argument. These observers say that donor-conceived persons who question the practice of donor conception are wishing away their own existence, and that without the use of a sperm or egg donor or surrogate these young people would not be alive. I find this response highly insensitive. All of us, no matter how we arrived here, should be able to share our stories and struggles in an atmosphere of respect and dignity without being told that we are irrationally ignoring the process that gave us life or are failing to show sufficient appreciation for our life.<sup>51</sup>

### **The Social Science Evidence Suggesting the Importance of Biological Parents**

From a social scientific point of view, what do we know about children’s experiences when they do not grow up with their own mother and father? In many areas we know a great deal. In some, we need to learn more.

In recent decades a powerful consensus among social scientists has emerged about the benefits of marriage for children. The *New York Times* not long ago reported: “From a child’s point of view, according to a growing body of social science research, the most supportive household is one with two biological parents in a low-conflict marriage.”<sup>52</sup>

Children raised by divorced or never-married parents face an increased risk of living in poverty, failing in school, suffering psychological distress and mental illness, and getting involved in crime. Children raised outside a married family are less likely to graduate from college and achieve high-status jobs. When they grow up, they are more likely to divorce or become unwed parents.

In terms of children's physical health and well-being, marriage is associated with a sharply lower risk of infant mortality, and children living with their own married parents are more physically healthy, on average, than children in other kinds of families. Most tragically, children not living with their own two married parents are at significantly greater risk of child abuse and suicide.<sup>53</sup>

Increasing numbers of people are realizing that marriage has important benefits for children. What many do not know is that there is something about the marriage of a child's own mother and father (as opposed to a remarriage) that on average brings these benefits. On many important indicators of child well-being, such as teen pregnancy, educational failure, delinquency, and child abuse, *children raised in married stepparent families look more like children of single parents than children raised by their own, married mother and father.*<sup>54</sup>

Some who advocate for legalized same-sex marriage say that it will be good for children because the children will now have two parents. But the stepfamily data suggest it may not be that simple. We don't know how much the poorer outcomes in stepfamilies are due to the history of dissolution and other unique problems facing stepfamilies and how much is due to the child being raised in a home with a non-biologically related stepparent.<sup>55</sup>

Most stepparents are without question good people who do their very best raising the children in their care, but it is vital for those shaping family policy to be acquainted with the large body of research showing that children raised in the care of non-biologically-related adults are at significantly greater risk, in particular of abuse. Many are not aware of the body of research showing that mothers' boyfriends and stepfathers abuse children more often on average than fathers do, with children especially at risk when left in the care of their mothers' boyfriends. More than seventy reputable studies document that an astonishing number—anywhere from one third to one half—of girls with divorced parents report having been molested or sexually abused as children, most often by their mothers' boyfriends or stepfathers.<sup>56</sup> A separate review of forty-two studies found that “the majority of children who were sexually abused...appeared to come from single-parent or reconstituted families.”<sup>57</sup> Two leading researchers in the field conclude, “Living with a stepparent has turned out to be the most powerful predictor of severe child abuse yet.”<sup>58</sup>

The fields of evolutionary biology and psychology yield some insights into why children are, on average, far safer with their biological parents. David Popenoe, a



sociologist at Rutgers University, sums up the research this way: “From the perspective of evolutionary psychology, the organization of the human nuclear family is based [in part on]...a predisposition to advance the interests of genetic relatives before those of unrelated individuals, so-called inclusive fitness, kin selection, or nepotism.<sup>59</sup> With respect to children, this means that men and women have likely evolved to invest more in children who are related to them than in those who are not.<sup>60</sup> The world over, such biological favoritism seems to be the rule.”<sup>61</sup>

Of course, to recognize that adults tend to favor their biological children is not to say that this predisposition is necessarily or always a *good* thing. Rather, it is to recognize that this tendency is highly common and probably even hardwired, or biologically primed, into humans. Ideally, all of us would be as deeply committed to and concerned for other people’s children as we are for our own, but practically speaking the human race is not there yet.

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*...while biology is not everything, in both the sciences and the voices of children we learn that biology does matter.*

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The example of adoption, however, remains an inspiration. When the state carefully screens prospective adoptive parents and these parents receive social support for their role as parents, and particularly when adopted children can be raised from birth by parents who are committed to one another over the long haul, the outcomes for those children don’t look much different from those raised by their own married parents and are almost certainly better than those being raised in an unwanted, abusive, or neglectful environment. So again, we see that while biology is not everything—biological parents can fail their children, and adoptive parents are generally highly committed and loving parents—in both the sciences and in the voices of children we learn that biology *does* matter.

What does the research on non-biological parents and parent figures, including those found in stepfamilies and other alternative family structures, mean for children being raised by same-sex parents? We don’t know, at least not yet. The existing research on same-sex parenting is limited because same-sex couples raising children comprise a very small part of the overall population and are only recently becoming more visible.

There have been a number of scholarly reviews of the literature on same-sex parenting.<sup>62</sup> One of the most thorough was prepared by Steven Nock, a sociologist at the University of Virginia, who was asked to submit a brief for a major same-sex marriage case in Canada. After reviewing several hundred studies he concluded that all of the articles “contained at least one fatal flaw of design or execution” and “not a single one of those studies was conducted according to general accepted scientific standards of research.”<sup>63</sup>

Limitations and design flaws that he and other reviewers have noted include: a virtual lack of nationally representative samples used; limited outcome measures

(mostly of interest to developmental psychologists rather than to sociologists who study the family); frequent reliance on a mother's report of her parenting abilities and skills rather than objective measures of the child's well-being; and a virtual lack of long-term studies that follow children of same-sex parents to adulthood. But the biggest problem by far is that the vast majority of these studies *compare single lesbian mothers to single heterosexual mothers*—in other words, they compare children in one kind of fatherless family with children in another kind of fatherless family.<sup>64</sup>

How does the long-term experience of children raised by partnered lesbian moms or gay dads compare with those raised by their own mom and dad? We don't know yet. But we do know that compared to children in many other alternative family forms—children of divorce, never-married heterosexual parents, stepfamilies, and those with single mothers—those children who are raised by their own married mother and father in a low-conflict marriage are, on average, significantly better off.<sup>65</sup>

Similarly, with regard to children conceived with donor sperm, a donor egg, or a surrogate mother, as yet there are no data on these children's long-term, emotional well-being. Researchers should listen to the stories that are beginning to emerge and undertake rigorous studies of their experiences.

We have more to learn. But evidence and sensitive observations of children's lives strongly suggest the importance to children of recognizing their need to be raised, whenever possible, by their own mother and father.

## **Redefining Parenthood—What's Next?**

### **Increasing Slippage in the Meaning of Fatherhood and Motherhood**

The redefinition of parenthood is shaping our culture and our legal system in ways that contribute to further deep uncertainties in the meanings of fatherhood and motherhood.

Evidence of this new uncertainty is found in rulings, proposals, and stories from around the world. In Australia, sperm donors now have the right to contact their over-18 progeny. But who are these men? Are they sperm donors, or are they fathers who have rights to know their children?

In New Zealand, the law commission proposed that sperm and egg donors be allowed to "opt in" to legal parenthood if they wish. Who are these people? Are they donors? Are they legal parents? If these biological parents can opt in and out of responsibility to children, as it pleases them, what is the rationale for not allowing other biological parents to do the same thing?

The *Washington Post Magazine* recently featured a story in which a woman who bore two children from the same anonymous sperm donor located him and brought the children across the country to meet him when they were 7 and 3 years old.<sup>66</sup> They stayed for a week in his home. Since that time the mother has legally changed the children's names (making the donor's surname their middle names) and designated him their guardian if she were to die. She has the children call him "Daddy" but there are no definite plans for the future. An unknown number of other women also conceived children with his sperm. For this 7 year old and 3 year old, is this man a father? A sperm donor? Something else? Who decides?

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*Are these men sperm donors,  
or are they fathers who  
have rights to know  
their children?*

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Last summer in Britain a new website was started—[www.parentsincluded.com](http://www.parentsincluded.com). The website is intended for lesbian and single women who wish to bear a child using donor sperm and want "both parents" to play a role in the child's life. Potential sperm donors who wish to have some kind of relationship with the resulting child are invited to enroll. If the desires of a lesbian or single woman and a sperm donor to share a child raising arrangement coincide, bingo! They can set up a broken family for their child before the child is even conceived.<sup>67</sup> A similar site for lesbians and gay men exists in Canada. Called the "LGBT Parent Matchmaker," it helps those in the Toronto area who wish to locate and pair off with one or more opposite sex partners with whom they can conceive and "co-parent" a child.<sup>68</sup> In another example, last summer in the U.S. a classified ad ran on a West Hollywood news website that read: "I am a single mom who wants to have another baby, but does not wish to use anonymous donor sperm. If you would like to be a father with visitation rights, send a picture and introductory letter to Kelly W..."<sup>69</sup>

Even the meaning of the term "sperm donor" is in flux. In some arenas sperm donors are being equated with fathers. In other situations "sperm donor" has become a term of opprobrium, hurled by women at the ex-boyfriends who are the fathers of their children. In one article from Florida a teenage girl refers to the ex-boyfriend who got her pregnant as "not a father" but "the sperm donor."<sup>70</sup> In an article from the Philippines a woman's friends refer to her ex-boyfriend, the father of her child, as a "mere sperm donor."<sup>71</sup> The term apparently signals that the man is meaningless to them (and, they most likely hope, to their children). It is a cutting put-down, equating a man they probably once cared for with nothing more than a minimal and fairly crude biological product.

Yet by far the most striking and potentially far-reaching development signaling slippage in the meaning of motherhood and fatherhood—a development already being witnessed in numerous courts—is the increasing recognition of "psychological" parenthood or "de facto" parental status. In the United States at least ten states, including Washington, California, Maine, Massachusetts, New Jersey, and Wisconsin, now allow someone with no biological or adoptive relationship to a child (and no

marital relationship to a child's parent) to be assigned parental rights and responsibilities as a psychological or de facto parent. To determine retrospectively whether an adult was a "parent" in a child's life, the courts examine indications such as whether the adult lived in the same household as the child, was encouraged to act as a parent by the child's existing parent, had acted like a parent without expecting financial compensation, and had spent enough time with the child to have bonded with him or her.<sup>72</sup> In many of these cases the petitions are brought by ex-partners who charge that the child's existing parent is denying their rights to the child. In other cases the child's existing parent charges that the ex-partner is now shirking parental responsibilities. These cases typically concern same-sex partners, but they also have serious, as yet unknown implications for the many heterosexuals who are or have been a child's stepparent,<sup>73</sup> or who have been a live-in partner.

In Britain, in a chilling, recent decision, a court ruled that two sisters ages 4 and 7 must be removed from their biological mother. Primary care was awarded instead to her ex-partner, another woman with no biological or legal relationship to the children. The decision was made after the biological mother violated a visitation order and fled with the children to another part of the country. In the decision, one judge (who nevertheless agreed with the order) expressed her qualms: "I am very concerned at the prospect of removing these children from the primary care of their only identifiable biological parent who has been their primary carer for most of their young lives and in whose care they appear to be happy and thriving."<sup>74</sup>

Advocates of assigning legal rights and responsibilities to "psychological" parents argue they have the best interests of the child in mind. The law, they say, should not allow biological or adoptive parents to deny their child a relationship with someone who the child has come to see as a mother or father, nor should it allow someone who has acted as a parent to evade those duties after the adults' relationship ends.

This concern is well-intended but woefully misguided, because it ignores an existing option that is far preferable for children. Even without same-sex marriage rights, most states in the U.S. allow second-parent adoption by gay and lesbian partners. In most of the cases that end up in court the second "parent," for whatever reason, did not exercise the option to adopt. Perhaps the couple could not agree on the adoption. Perhaps the second "parent" was uncertain what level of responsibility he or she wanted to take on. Perhaps they just never got around to it. (Or, perhaps they lived in a state that does not allow or readily facilitate second-parent adoption by same-sex couples, which I believe speaks far more to the need to expand second-parent adoption access than it does to create an entirely new, retrospective category called "psychological" parent.)

In contrast to the sometimes vague, gradual ways that parents can introduce new partners into their child's life, even asking the child to call that person "Mom" or

“Dad,” and the sudden ways in which these same parents can at times change their minds if the relationship goes sour, the clearly defined (and in the best interests of the child, appropriately onerous) process of adoption is the law’s best way of protecting children’s interests and their relationships with both parents should their parents break up. As a legal process, adoption is proactive, rigorous, and clear. The child, the child’s other parent, their community and the state know precisely when the adult in question is the child’s parent and when he or she is not. Once that adult becomes an adoptive parent an array of laws and norms clearly define his or her appropriate role in the child’s life. Adoptive parents cannot pass in and out of children’s lives. Their status is understood to be permanent and the legal and social consequences for trying to forsake that status are clear. For all these reasons, adoption is in general a far better way to protect children than routinely asking judges to determine whether an adult in the past met certain subjective criteria to qualify as a parent, especially when the judge acts over the objections of the child’s existing biological or adoptive parent.<sup>75</sup>

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In the brave new world of redefined parenthood, sperm donors might or might not be fathers.<sup>76</sup> Mothers’ girlfriends, and even ex-girlfriends, can be mothers (or fathers!). Despite their biological or gestational relationship to the child, egg donors and surrogates are usually not considered mothers, but they can be.<sup>77</sup> Absent fathers, when they anger their ex-girlfriends, can be reduced rhetorically to mere sperm donors. But generally unlike sperm donors, the state holds them accountable for child support for years to come.

What does “father” mean? What does “mother” mean? Who decides? How do children feel about these decisions?

### **Cloning and Same-Sex Procreation**

Not that long ago the specter of reproductive cloning induced gasps of horror in nearly everyone. No longer.

Despite the dramatic fall from grace of South Korean cloning researcher Hwang Woo-suk, research on cloning is proceeding with increasingly broad public support in many states and nations around the world.<sup>78</sup> The same month that Hwang Woo-suk made the now-discredited announcement that he had created 11 new stem cell lines derived from cloned human embryos, a team of scientists at Newcastle University in Britain announced that they had created cloned human embryos, one of which grew in the laboratory for five days. At the time, the South Korean achievement made front-page headlines around the world but the British news a week later barely elicited a yawn. Cloning embryos was already old news.

These researchers are pursuing what's known as "therapeutic" cloning, meaning that cells are farmed from the cloned embryos before allowing them to expire. Many nations have banned reproductive cloning but allow varying degrees of therapeutic cloning. Yet the only difference between therapeutic and reproductive cloning is whether the cloned embryo is implanted in a woman's womb.<sup>79</sup> The technology to implant the embryo—in vitro fertilization—has been in increasingly widespread use since 1978.

Has anyone implanted a cloned embryo in a woman's womb? A fringe group called the Raelians has claimed to have done so but the reports have not been confirmed. So far, no reputable scientist has announced doing so. But how long will it be?

An astonishing article ran last spring in Britain's *Guardian* newspaper, headlined, "Process holds out hope for childless couples." The process is reproductive cloning. The experts quoted at a conference who support this claim are not nobodies. Professor Robert Edwards, who pioneered in vitro fertilization and created the world's first "test tube" baby, Louise Brown, in 1978, said that "reproductive cloning should be considered for patients who have exhausted all other forms of treatment." For example, it "would be helpful for people who cannot produce their own sperm or eggs."<sup>80</sup>

At the same conference, James Watson—yes, the James Watson who with Francis Crick discovered the structure of DNA—argued "there is nothing inherently wrong with cloning." He went on: "I'm in favour of anything that will improve the quality of an individual family's way of life."

Critics point out that cloning experiments in animals have led to numerous stillbirths and deformed animals before succeeding in a live, apparently healthy animal (and even those animals have sometimes developed serious health problems later on). To those critics, Professor Edwards responds that genetic screening of embryos will take care of all that. With enormous confidence in the ability of medical science to detect every problem in an embryo—and with casual acceptance of tossing out all embryos that are not up-to-snuff—he remarked that "very soon" "only healthy embryos will be implanted during assisted reproduction." The "birth of a child with defects after fertility treatment" will be "a thing of the past."

He concluded with conviction: "If we stand back and say it can't be done, this is letting our patients down."<sup>81</sup>

The potential use of cloning techniques to aid in assisted reproduction is only one example of the stem cell research field growing ever closer to the fertility industry. In another example, an ongoing problem for stem cell researchers is the shortage of human eggs required for their work. Eggs can be retrieved from women only by putting them through a risky regimen of drugs and surgery.<sup>82</sup> The same scientists in



Britain who recently cloned a human embryo announced a plan one week later to ask women undergoing infertility treatment to donate their spare eggs for stem cell research. The proposal has been approved by the university ethics committee and is under consideration by Britain's fertility regulatory authority—potentially opening the door for a woman's doctor, her most trusted advisor in her often years-long effort to become pregnant, to ask her to donate her unused eggs for experiments with therapeutic cloning.<sup>83</sup>

Unfortunately, it doesn't stop there.

Scientists truly on the cutting edge are now especially interested in creating artificial sperm and eggs and fusing them in unexpected ways to create human embryos for implantation in the womb.

Last summer researchers at Sheffield University in Britain announced that they are now able to develop human embryonic stem cells into early forms of cells that can become eggs and sperm. If they succeed their work could mean, for example, that a single man could provide both the egg and sperm for fertility treatment, or that same-sex couples would no longer have to rely on sperm or egg donors—instead, they could have children genetically related to both of them.<sup>84</sup>

In headlines around the world news articles were frank about the implications: "The consequences of such work might even mean gay couples or single men could produce children," said the *Guardian* story.<sup>85</sup> "The technique raises the possibility that gay couples will be able to have biological children," said the story in the *New Zealand Herald*.<sup>86</sup> An article about the Sheffield research and similar work underway at Monash University in Australia was headlined: "Doing away with donors."<sup>87</sup> In a story filed from Copenhagen that ran on a U.S. advice and support website for gay and lesbian parents, the headline was, "Stem cell research may provide hope to gay couples." The article said the research is "huge news for the gay and lesbian community."<sup>88</sup>

At the same time, last fall a team in Edinburgh announced it had tricked an egg into dividing and created the first human embryo without a genetic father.<sup>89</sup> That same week British scientists at Newcastle University were granted permission to create a human embryo with three genetic parents.<sup>90</sup>

Over and over, reports about these breakthroughs emphasize the urgent and fundamental importance of assisting adults who wish to bear children. At most, some ethicists are quoted who might raise concerns about health risks. But the biggest issues are almost never raised: the long-term physical *and* emotional consequences for the children who might result; the movement toward a society that views some human lives as fit for laboratory experimentation for the benefit of

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*An article was headlined  
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childless couples." That process  
is reproductive cloning.*

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others; the larger consequences for children and society when parenthood is increasingly viewed mainly as a means to fulfill adult desires—mediated, defined, and administered by the state.<sup>91</sup>

### **Group Marriage: Polyamory and Polygamy**

Whatever one's feeling about the legalization of same-sex marriage, and however emphatically most advocates of same-sex marriage say they do not support group marriage, recent events make clear that successes in the same-sex marriage movement have emboldened others who wish to borrow the language of civil rights to break open the two-person understanding of marriage and, with it, parenthood.<sup>92</sup> These efforts are emerging from at least two surprising directions.<sup>93</sup>

Polyamorists are perhaps the newest, most unfamiliar players on the scene. Polyamory (meaning “many loves”) is different from polygamy (meaning “many marriages”). Polyamory involves relationships of three or more people, any two of whom might or might not be married to one another. Polyamorous people variously consider themselves straight, gay, bisexual, or just plain “poly,” while polygamists are generally heterosexual. Polyamorists distinguish themselves from the “swingers” of the 1970s, saying that their own relationships emphasize healthy communication or what they call “ethical non-monogamy.”

Polyamorous unions have been around for a while—probably for a long while—but they and their supporters are now seeking increasing visibility and acceptance. Indeed it seems one can hardly pick up a major newspaper without reading about them. A recent *Chicago Sun-Times* article mentioned the “Heartland Polyamory Conference” to be held this summer in Indiana (a similar Midwestern polyamory conference was held two years ago near the Wisconsin Dells).<sup>94</sup> A *Chicago Tribune* article not long ago featured John and Sue, a married couple, and Fred, Peggy, and Bill who share their bed—the reporter termed them an “energetic bunch” of polyamorists.<sup>95</sup> And there are routinely articles about polyamory in alternative periodicals such as the *Village Voice* and *Southern Voice* and, increasingly, campus newspapers.

Yet support for polyamory is not just found among the fringe types; notably, the topic is emerging at the cutting edge of family law and advocacy. In a recent report on family law, Daniel Cere of McGill University cites examples including a University of Chicago Law School professor, Elizabeth Emens, who last year published a substantial legal defense of polyamory in a New York University law review; a major report, “Beyond Conjugalities,” issued by the influential Law Commission of Canada which wondered whether legally recognized relationships should be “limited to two people,” and in *An Introduction to Family Law*, published by Oxford University Press, a British law professor who notes quizzically, “The abhorrence of bigamy appears to stem...from the traditional view of marriage as the exclusive

locus for a sexual relationship and from a reluctance to contemplate such a relationship involving multiple partners.”<sup>96, 97</sup>

Meanwhile, the Alternatives to Marriage Project, whose leaders are featured often by mainstream news organizations in stories on cohabitation and same-sex marriage, includes polyamory among its “hot topics” for advocacy.<sup>98</sup> Among religious organizations the Unitarian Universalists for Polyamorous Awareness hopes to make their denomination the first to recognize and bless polyamorous relationships.<sup>99</sup>

Advocates for polyamory often explicitly mimic the language used by supporters of gay, lesbian, and bisexual people. They say they must keep their many loves “in the closet.” That they cannot risk revealing their personal lives for fear of losing their jobs or custody of their children.

That to reveal their inner “poly” nature is “coming out of the closet.” That being poly is just who they are.

One potential complication is children. Websites for practitioners of polyamory devote considerable space to the challenges of being a poly parent.

At LiveJournal.com, one mom says, “Polyamory is what my kids know. They know some people have two parents, some one, some three and some more. They happen to have four. Honestly? Kids and polyamory? Very little of it effects [sic] them unless you’re so caught up in your new loves you’re letting it interfere with your parenting.”<sup>100</sup>

Another older mom advises a young poly mother-to-be who isn’t sure how to manage a new baby and her poly lifestyle: “Having a child... and being poly isn’t exactly a cakewalk, but...it is possible. Sometimes it means that you take the baby with you to go see your OSO [other significant other], or your OSO spends more time at the house with you, your husband, and the baby, and sometimes things will come up where plans have to be cancelled *at the very last minute* because baby is sick or something.... There is a lot of patience that is needed from all parties involved, but it can be done. The first six months are extremely hard.” (italics hers)<sup>101</sup>

Another woman is offended by her best friend’s lack of support for her polyamorous relationship that involves a couple who have a six-year old daughter. She writes, “No matter how happy and content that kid is, according to my friend we and her parents are undoubtedly wreaking some serious damage on her by not completely concealing our relationship from her.” She sighs: “Sometimes intelligent, goodhearted, rational people who know you fairly well can still hold rather irrational and bigoted opinions.”<sup>102</sup>

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*Polyamory websites devote considerable space to the challenges of being a poly parent.*

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A pro-poly website despairs: “One challenge that faces poly families is the lack of examples of poly relationships in literature and media.”<sup>103</sup> A sister site offers the “PolyKids Zine.” This publication for kids “supports the principles and mission of the Polyamory Society.” It contains “fun, games, uplifting PolyFamily stories and lessons about PolyFamily ethical living.” Its book series includes titles such as *The Magical Power of Mark’s Many Parents* and *Heather Has Two Moms and Three Dads*.<sup>104</sup>

No one can predict the legal future of polyamory. But in a startling development, and coming from a very different direction, another cultural assault on the two-person understanding of marriage and parenthood is resurging—polygamy.

The debut this spring of HBO’s new television series, *Big Love*, which features a fictional, in some ways likeable polygamous family in Utah, has suddenly propelled polygamy to the front pages and put the idea of legalized polygamy “in play” in some surprising quarters. An article in the March issue of *Newsweek*, headlined “Polygamists Unite!” quotes an activist saying, “Polygamy is the next civil rights battle.” He argues, “If Heather can have two mommies, she should also be able to have two mommies and a daddy.”<sup>105</sup> That weekend on the *Today* show hosts Lester Holt and Campbell Brown gave a sympathetic interview to a polygamous family.

During that same month, the *New York Times* devoted much attention to the subject of polygamy. One article featured several polygamous women watching *Big Love*’s first episode, sharing their perspectives such as: “[Polygamy] can be a viable alternative lifestyle among consenting adults.”<sup>106</sup> In another article an economist snickered that polygamy is illegal mainly because it threatens male lawmakers who fear they wouldn’t get wives in such a system.<sup>107</sup> In a separate piece, columnist John Tierney argued that “polygamy isn’t necessarily worse than the current American alternative: serial monogamy.” He concluded, “If the specter of legalized polygamy is the best argument against gay marriage, let the wedding bells ring.”<sup>108</sup> Not to be outdone, the cover of the June 19, 2006 *New Yorker* magazine featured three smiling brides and a beaming groom driving away in a convertible with “just married” scrawled across the trunk.

It is not just *Big Love* that is putting polygamy “in play” in the West. In a development that shocked many Canadians last winter, two government studies released by the Justice Department recommended the decriminalization of polygamy, with one report arguing the move was justified by the need to attract more skilled Muslim immigrants. And in Canada and the U.S., a significant number of today’s legal scholars are arguing, as one columnist summarized, that “the abuses of polygamy flourish amidst the isolation, stigma, and secrecy spawned by criminalization.”<sup>109</sup> Polygamy per se is not the problem, only “bad” polygamy.

Still, why would any society make the formal move toward legal recognition of polyamorous or polygamous unions? One likely justification might arise from

proposals to recognize as third parents those who donate sperm or eggs for the conception of a baby, such as the New Zealand Law Commission and Victoria Law Reform Commission proposed last year. In Canada, judges have already been asked to recognize three legal parents for children. In one decision involving a lesbian couple who wanted the biological father recognized as a third parent, the judge noted that he wanted to grant their petition and was only prevented from doing so by existing laws.

If and when children are recognized as having three (or more) legal parents, the argument for recognizing some form of group marriage will almost certainly go something like this: “Why should children with three parents be denied the same legal and social protections that children with only two parents have?”

If we get to that place, pity the children. Already we see the havoc wreaked on children’s lives when *two* parents break up and fight over their best interests. Imagine when three or more adults who have equal claims on a child end their relationship. In the future, how many homes will we require children to grow up traveling between in order to satisfy the parenting needs of these many adults? Three? Four? More?

Unless and until same-sex procreation or three-person reproduction becomes a reality, children will always arise from the union of one man and one woman. All children have, as the French feminist philosopher Sylviane Agacinski calls it, a “double origin,”<sup>110</sup> that of a mother and a father, an origin we cannot deny and that the children certainly cannot ignore, for they see it every time they look in the mirror. When we change the mother-father dimension of marriage or the two-person understanding of marriage, we also change understandings of parenthood in ways that will almost certainly dramatically shape the future for children.

## Conclusion

**A**T THIS MOMENT, with virtually no public discussion, the relationship that is most core and vital to children’s very survival—that of parenthood—is being fundamentally redrawn through new laws, proposals, and practices affecting marriage, reproduction, and family life, with the state playing an increasingly active role in defining parenthood for broader categories of children.

Given that in some ways the genie is already out of the bottle, it is not entirely clear what actions the state and social leaders should take in the near future. For instance, some nations have moved to ban the practice of anonymous donation of sperm and eggs. This would seem to be a positive development for children—after

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all, there is a strong argument to be made that children have a right and need to know their origins. Yet greater acceptance of the idea that donor-conceived children have a right to know their origins is also leading to the idea that these children should have the possibility of some kind of *relationship* with their sperm or egg donor (and not just a file of information), or even that the donor should have some kind of legal parental status in the child's life, such as in New Zealand and Australia where commissions have proposed allowing donors to "opt in" as children's third legal parents.

What might the future hold for children with three or more legal parents? We have no idea.

Or, in another example, after Britain passed a law banning donor anonymity there was a purported drastic drop in the number of men willing to donate sperm. The state health service then began an active campaign to recruit sperm and egg donors, no longer just allowing the intentional conception of children who will not know or be raised in relationship with their own biological parents, but very intentionally promoting it. Meanwhile, couples in that nation who wish to conceive have even greater incentive to go abroad to nations or regions that have less regulation—such as Spain, India, Eastern Europe, or elsewhere—to procure sperm or eggs or surrogate wombs, making it even less likely that their child will ever be able to trace their origins or form a relationship with a distant donor abroad.

Again, how will these developments affect children? At the moment we have no real idea. But we certainly do have serious and immediate cause for concern.

For reasons like these, this report does not conclude with the usual list of specific policy recommendations. Rather, this report issues a call to fellow citizens in the United States and Canada and around the world. The call is for all of us to participate in urgently needed conversation and research about the revolution in parenthood and the needs of children.

This much is clear: When society changes marriage it changes parenthood. The divorce revolution and the rise in single-parent childbearing weakened ties of fathers to their children and introduced a host of players at times called "parents." The use of assisted reproductive technologies by married heterosexual couples—and later by singles and same-sex couples—raised still more uncertainties about the meaning of motherhood and fatherhood and exposed children to new losses the adults never fathomed. The legalization of same-sex marriage, while sometimes seen as a small change affecting just a few people, raises the startling prospect of fundamentally breaking the legal institution of marriage from any ties to biological parenthood. Meanwhile, successes in the same-sex marriage debate have encouraged others who wish fully and completely to break open the two-person understanding of marriage and parenthood.



Here is where we are. In law and culture, the two-natural-parent, mother-father model is falling away, replaced with the idea that children are fine with any one or more adults being called their parents, so long as the appointed parents are nice people. This change is happening incrementally, largely led by self-appointed experts and advocates in a few fields. But it does not have to be this way. Those of us who are concerned can and should take up and lead a debate about the lives of children and the future of parenthood.

As we launch this conversation, a guiding principle could be this: When there is a clash between adult rights and children's needs, the interests of the more vulnerable party—in this case, the children—should take precedence.<sup>111</sup> A great deal of evidence supports the idea that children, on average, do best when raised by their own, married mother and father, with adoption as an important, pro-child, admirable alternative. With regard to some newly visible family forms, such as families headed by gay or lesbian parents or those created using donor sperm, eggs, or surrogacy, we have more to learn more about the lasting, inner experience of the children.

To provide time and space for this conversation and for more research, this report also calls for a moratorium or a “time out” lasting five years. Until we better understand and prioritize the needs of children, no legislatures, courts, or commissions should press forward with recommendations or changes that broadly undermine the normative importance of mothers and fathers in the lives of children, nor should they support intentionally denying unborn children knowledge of and a relationship with their own mother and father. Rather, they should concentrate their energies on rigorous inquiry and active debate about the needs of children and the role of mothers and fathers in their lives.

The well-being of the world's children calls us to act—not years from now but right now. For their sake, for those born and those yet to be born, we must be willing to launch a sometimes uncomfortable but urgent debate about the well-being of children born in an age that is rapidly redefining the meaning of parenthood. Nothing is inevitable. The time to act is now.

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## Endnotes

1. Key insights about the fragmentation of parenthood come from Dan Cere, Principal Investigator, *The Future of Family Law: Law and the Marriage Crisis in North America*, (New York: Institute for American Values, 2005), especially the section titled “Fragmenting Parenthood.”

2. Bill C-38 legalized same-sex marriage nationally in Canada. Same-sex marriage was already legal in seven Canadian provinces and one territory, including Ontario, British Columbia and Quebec.

3. Reported as “Spanish birth certificates to account for gay couples,” on the Advocate.com, March 8, 2006. They cite an article from *The Daily Telegraph* in London. For further discussion, see also George Weigel, “Europe’s Two Culture Wars,” *Commentary*, May 2006. Weigel writes, “...Earlier this year [in Spain]...the Zapatero government, which had already legalized marriage between and adoption by same-sex partners and sought to restrict religious education in Spanish schools, announced that the words ‘father’ and ‘mother’ would no longer appear on Spanish birth certificates. Rather, according to the government’s official bulletin, ‘the expression ‘father’ will be replaced by ‘Progenitor A,’ and ‘mother’ will be replaced by ‘Progenitor B.’” As the chief of the National Civil Registry explained to the Madrid daily ABC, the change would simply bring Spain’s birth certificates into line with Spain’s legislation on marriage and adoption. More acutely, the Irish commentator David Quinn saw in the new regulations ‘the withdrawal of the state’s recognition of the role of mothers and fathers and the extinction of biology and nature.’”

4. New Zealand Law Commission, report 88, “New Issues in Legal Parenthood,” (April 2005, Wellington, New Zealand).

5. Victorian [Australia] Law Reform Commission, report on assisted reproductive technology, (April 2005, Melbourne, Australia), Section 2.35. In other words, the planned conception of children lacking a relationship with their own father or mother serves a social good of reducing the stigma felt by already-born children who do not live with their own father or own mother.

6. “Report of the Commission on Assisted Reproduction (Ireland),” April 2005.

7. Christine O’Rourke, quoted in “Reproduction report ‘too radical for legislation’” in *The Sunday Times—Ireland*, May 15, 2005, online edition.

8. “ICMR guidelines go a long way in curbing exploitation,” NewIndPress.Com, June 21, 2005, emphasis added.

9. Countless articles reported that banning donor anonymity had caused a sudden, drastic drop in men willing to donate sperm in Britain. But just recently the agency that regulates fertility clinics in Britain—the Human Fertilisation and Embryology Authority—refuted that claim, calling it a “myth” and saying the problem instead is “patchy provision” of sperm “across the country.” See “Sperm donor law not a deterrent,” BBC News, June 8, 2006, online edition. Nevertheless, the perception, real or not, is that it is very difficult to obtain donor sperm in Britain and extremely difficult to obtain donor eggs.

10. See “Sperm donor campaign launched,” DeHavilland, *National News*, January 26, 2005; “Every sperm donor recruited costs public £6,250, say critics,” *News Telegraph*, by Charlotte McDonald-Gibson, July 3, 2005, online edition. In the United States, the California Cryobank has been offering open identity sperm donation for nearly two decades. Some of the larger sperm banks in the U.S. are beginning to offer this option. See “Sperm donation process moving toward more openness in identifying fathers,” *Pittsburgh Post Gazette*, by Virginia Linn, August 24, 2005, online edition.

11. There is now pressure on the state to tax this growing business. “Taxman has eye on sperm,” *The Copenhagen Post*, June 3, 2005, article not available online. See also, “Danish tax may drain world’s top sperm bank,” *China View*, May 27, 2005. Coverage of Cryos prompted a spate of stories about blue-eyed, blonde “Viking babies” being born around the world.

12. “Insemination rights for lesbians,” News.com.au via Reuters, June 2, 2006 <http://www.news.com.au/story/0,10117,19346798-23109,00.html>.

13. *Thanh Nien News*, “Doctors call for community sperm donation in Vietnam,” August 15 2005, reported by Thanh Tung, translated by Minh Phat.

14. Medical professionals used to urge infertility patients (who were almost always heterosexual married couples) to keep their use of donor sperm a secret, for their sake as well as their child’s. Now the trend is moving toward encouraging parents to be open with their children, but many parents remain reluctant to do so, especially when there is a (social) father in the family.

15. “Pressure on Sperm Donor Laws,” *The Age*, by Carol Nader, June 1, 2005, web edition; “Ad campaign planned for sperm donor kids,” Tanya Giles, June 2, 2005, *Herald Sun*, web edition; see

also, "Revisiting a law that was ahead of its time," *The Age*, June 6, 2005, editorial, which states that "by 1995, an estimated 10,000 Victorians had been born using donor sperm or eggs" and argues that the rights of children to know their genetic origins outweigh the rights of their parents to keep this information from them. Further coverage of the planned \$100,000 ad campaign is found in Carol Nader, "Bid to ease trauma as donors seek children," *The Age*, January 27, 2006, online edition.

16. Bob Egelko, "State Supreme Court upholds rights, responsibilities of same-sex parents," *San Francisco Chronicle*, August 22, 2005, online edition; Adam Liptak, "California Ruling Expands Same-Sex Parental Rights," *New York Times*, August 23, 2005, online edition; David Kravets, "California Court Protects Kids of Gay Couples," Associated Press, August 23, 2005.

17. As *Time* magazine noted when the Supreme Court refused to hear a case from Washington State that granted de facto parental status to a mother's lesbian ex-partner, "While we closely monitor how gay rights are granted and taken away, we pay almost no attention to the fact that stepparents are in the same legal limbo. Despite being ubiquitous, step-relationships are rarely recognized by the law. In most states, stepparents are considered 'legal strangers' even if they have cared for and supported a stepchild for years. They have almost no official responsibility and barely any rights." Rulings on de facto parenthood are likely to unfold among heterosexuals in unexpected ways. Po Bronson, "Are Stepparents Real Parents?," *Time Magazine*, May 17, 2006, online edition.

18. A subsequent decision denied the egg donor any relationship to the children. The surrogate mother was later awarded custody of the triplets; in a recent development a judge ordered that she must repay the biological father her surrogate fee as well as child support. (The surrogate mother and her husband already have other children and, while her husband does work, they appear to live on a limited income.) The surrogate mother took the triplets home against the biological father's wishes after, she claims, he and his girlfriend did not name the children or visit them in the hospital for six days after seeing them when they were born. "Surrogate Mom Must Repay Biological Father," AP, March 16, 2006.

19. A similar case, in which a mother now seeks child support for two-year-old twins fathered by a known sperm donor, was recently filed in the Chicago area. As in the Pennsylvania case, the biological mother and father worked out an informal arrangement for use of the sperm. To my knowledge, men who donate their sperm anonymously in clinics have not been held liable for child support in the United States.

20. Lawrence Kalikow, quoted in "PA legislators ponder laws for egg, sperm donors," in *Pittsburgh Tribune-Review*, June 5, 2005, online edition.

21. The Ohio legislation is H.B. 102. In New Zealand a *New Zealand Herald* article, headlined "New hope for childless couples," reports "In a significant social shift, embryos left over by couples who have successfully undergone in vitro fertilization (IVF) will be made available to others trying to have a child." *New Zealand Herald*, by Stuart Dye, September 8, 2005, online edition.

22. Gov. Mitt Romney has opposed this idea and instead instructed hospitals in these cases to cross out the words "mother" or "father" and write in the phrase "second parent." He added: "Look, each child has a mother and a father. They should have the right to have that mother and father known to them..." See "Massachusetts debates birth certificates for babies of same-sex couples," Fox News.com July 27, 2005.

23. In a "softer" example of this kind of thinking, a city in Australia, using state and federal funds, distributed a booklet called "We're Here" to more than 2,000 day care centers which encouraged staff to challenge homophobia. Among its recommendations was to use the terms "Partner A and Partner B on forms instead of Mum and Dad." Reported in the *Herald Sun*, August 5, 2005, by Susie O'Brien.

24. A recent article about the policy was on the front page of the *Montreal Gazette*, June 1, 2005.

25. Justice Paul Rivard of the Supreme Court of Justice, quoted in "Court rules lesbians can be co-mothers; Ontario given 12 months to change law," by Tracey Tyler, *Toronto Star*, June 7, 2006. In Canada, the email newsletter produced by Diane Allen of the Infertility Network (based in Toronto) is a very helpful source for news items related to infertility, donor conception, adoption and reproductive/genetic technologies in Canada and around the world. See [www.infertilitynetwork.org](http://www.infertilitynetwork.org).

26. Note that in the area of adoption the question of revealing the identity of birth mothers is hotly contested, in part because of fears that loss of anonymity will discourage women from bringing the child to term.

27. Larry Fisher-Hertz, "Ulster gay couple wins legal battle; son's birth certificate is changed," *Poughkeepsie Journal*, January 19, 2006. The child was adopted in Virginia.

28. See “Emmett has two mommies: the next gay rights battle heads to court,” *Portland Mercury News*, April 9, 2006, online edition.

29. The English translation of the report, made available on the French report website, translated “le principe de precaution” as “a principle of caution,” but an ethicist fluent in English and French tells me that the more accurate translation in English is the commonly used term “precautionary principle.”

30. French National Assembly, “Parliamentary Report on the Family and the Rights of Children,” January 26, 2006.

31. The redefinition of parenthood also appears to be encountering some resistance in Finland. There, one article reports the nation is in the midst of “intense debate” about a bill that would impose regulations on fertility treatments. “Leading the assault against the bill were the opposition Christian Democrats, with the party’s chairwoman Paivi Rasanen in the vanguard. Her main argument was that fatherlessness for a child is worse than childlessness for an adult, and that therefore a child’s right to a father trumps other rights in the matter.” From “Opinions deeply polarized in parliamentary debate on fertility treatment bill,” *Helsingin Sanomat*, February 24, 2006, online edition. China also bans the sale of sperm or eggs and recently warned it will punish those who profit from surrogacy, but of course there are other significant concerns about China’s role in regulating reproduction, including coercive enforcement of the one-child policy.

32. See <http://www.unicef.org/crc/>. Debates at the time of the ratification make clear that treaty signatories understood “parents” to mean a child’s own mother and father. The United States has not signed the convention. For more on the convention, see Don Browning, “The United Nations Convention on the Rights of the Child: Should It Be Ratified and Why?” *Emory International Law Review*, volume 20, no. 1, Spring 2006.

33. Elizabeth Marquardt, *Between Two Worlds: The Inner Lives of Children of Divorce* (New York: Crown Publishers, 2005); Judith Wallerstein, Julia Lewis, and Sandra Blakeslee, *The Unexpected Legacy of Divorce: A 25 Year Landmark Study* (New York: Hyperion, 2000).

34. Donor-conceived people say that donor conception is very different from adoption. Adopted children know that their biological parents, for whatever reason, could not raise them. That knowledge can be painful. At the same time, they also know that the parents who adopted them saved them from the fate of having no family. By contrast, donor-conceived children know that the parents raising them are also the ones who, before conception, intentionally planned to deny them a relationship with (and often knowledge of the identity of) at least one of their biological parents. The pain they might feel was caused not by a distant, unknown biological parent who gave them up but by the parent who raised them and cares for them every day. This knowledge brings the loyalty and love children naturally feel for the parents raising them in direct conflict with the identity quest that most young people go through. When donor-conceived young people ask, “Who am I? Where did I come from? Why am I here?” they can confront a welter of painful uncertainties that our culture hasn’t begun to understand. For example, Joanna Rose, a doctoral student and donor-conceived adult in Australia, writes: “Our kinship was broken as part of a reproductive ‘service’ to the parents that raised us. Unlike the child placement principle now in effect in adoption this is not a last resort, nor could severed kinship be said to be in our best interests...” See <http://familyscholars.org/?p=4488>.

35. Tangled Webs is an organization based in Victoria, Australia that is organizing some of these donor-conceived young adults around the world. Another organization of donor-conceived adults was recently formed in Japan: “Japanese children of anonymous sperm donors seek support, right to truth,” from the *Yomiuri Shimbun*, reprinted in *Fort Wayne News Sentinel*, July 5, 2005, online edition.

36. “I want to know where I come from,” BBC News, April 26, 2005, online edition; “Sperm and the quest for identity,” BBC News, June 1, 2005, online edition; Nancy J. White, “Are you my father?” *Toronto Star*, April 16, 2005, online edition; Carol Nader, “My dad is my dad, but who gave the sperm?” *The Age* (Australia), June 3, 2005, online edition; Judith Graham, “Sperm donors’ offspring reach out into past,” *Chicago Tribune*, June 19, 2005, online edition, and more.

37. In the United States, see [www.donorsiblingregistry.com](http://www.donorsiblingregistry.com), a website started by a mother originally to help her donor-conceived son who wished to locate his half-siblings. It has since been featured on *Good Morning America*, *The Today Show*, *Oprah*, and many other programs. In Britain, see [www.ukdonorlink.org.uk](http://www.ukdonorlink.org.uk), a pilot voluntary information exchange and contact register funded by the Department of Health. Its mandate is to “encourage more donors, donor-conceived adults and their genetically related half-siblings to register with them and have the chance to make contact with each other.” See, “UK Donor Link Confirms Matches for Half-Siblings,” *Medical News Today*, June 1, 2005, online edition. Note that it is more than a little ironic that the British Health Service is funding recruitment

efforts for sperm and egg donors and also funding attempts for donor-conceived adults to make contact with their donors and their half-siblings. The New Zealand government just began a similar donor registry service in August 2005: “The Human Assisted Reproductive Technology (HART) Register will record all future donations at fertility clinics which result in a birth, and information about earlier donors and births. It will allow future donors and their offspring to find out about each other, and will also give people involved in earlier donor treatments the chance to do the same if they all give consent.” <http://www.stuff.co.nz/stuff/0,2106,3385637a7144,00.html>. “New register for donors and donor offspring launched,” August 22, 2005.

38. The obvious absence of the biological father in families headed by single mothers by choice and lesbian couples appears to have prompted more openness among many of these mothers to telling their children they were conceived with donor sperm, but studies suggest that the majority of generally heterosexual, married women do not tell their children they were conceived with a donor egg. For one analysis, see Nancy Hass, “Whose Life Is it Anyway?” *Elle Magazine*, September 2005 issue. Among many astute observations in the piece, Hass notes that becoming pregnant with a donor egg is yet another way that ageing women can suggest they are still youthful. (Among married, heterosexual men, there are indications that use of donor sperm is declining because of increasingly effective treatments for male infertility.)

39. These terms were used by donor-conceived teenagers in Amy Harmon, “Hello, I’m Your Sister. Our Father is Donor 150,” *New York Times*, November 20, 2005, front page.

40. Joanna Rose, on the Family Scholars Blog.

41. See Abigail Gardner, *Families Like Mine: Children of Gay Parents Tell It Like It Is* (New York: Harper Paperbacks, 2005).

42. One of the few studies of their attitudes is a small study by J.E. Scheib, M. Riordan, and S. Rubin, “Adolescents with open-identity sperm donors: reports from 12-17 year olds,” *Human Reproduction* volume 20 no. 1, (European Society of Human Reproduction and Embryology, 2004), pp. 239-252. The majority of the teenagers who returned mail-back questionnaires reported that they would contact the donor because they believed it would help them learn more about themselves. They are reported to have felt “somewhat to very comfortable” about their origins. Very few said they wanted a “father/child relationship” with the sperm donor and none said they would ask him for money. (One of the primary concerns of this study was how open-identity sperm donation would impact the adults as well as the children, and most headlines reporting the study emphasized the “good news” for adults, such as this one: “Children ‘respect privacy’ of their sperm donor fathers,” *News Telegraph*, by Nic Fleming, December 11, 2004, online edition.) While the study findings merit consideration, a mail-in survey with check-the-box responses is not a particularly strong way to gauge the inner experience of young people. It is also problematic to survey teenage and younger children who are still living at home and very much dependent on their parents. In-person, lengthy interviews with independent young adults who are perhaps more open and reflective about their childhood experience might yield a different portrait, especially if the anecdotal stories from young adult donor-conceived people now emerging are any indication.

43. Narelle Grech and Joanna Rose posted their comments on the Family Scholars Blog at [www.familyscholars.org](http://www.familyscholars.org).

44. Quoted in Tom Sylvester, “‘Sperm Bank Baby’ to Meet Test Tube Dad”, National Fatherhood Initiative, *Fatherhood Today*, page 4, volume 7, issue 2, Spring 2003. Sources for the article included Brian Bergstein, “Woman to meet her father—a sperm donor,” Associated Press, January 30, 2002; Yomi S. Wronge, “P.A. teen to contact dad who was sperm donor,” *Mercury News*, January 20, 2002; Trisha Carlson, “Sperm bank baby to learn donor’s name,” KPIX Channel 5, February 1, 2002; and Tamar Abrams, “Test Tube Dad,” viewed on [www.parentsplace.com](http://www.parentsplace.com), April 1, 2002.

45. “I want to know where I come from,” BBC News, April 26, 2005, online edition.

46. Judith Graham, “Sperm donors’ offspring reach out into past,” *Chicago Tribune*, June 19, 2005, online edition.

47. *Ibid.*

48. “Japanese children of anonymous sperm donors seek support, right to truth,” from the *Yomiuri Shimbun*, reprinted in *Fort Wayne News Sentinel*, July 5, 2005, online edition. Also in Japan, a 39 year old donor-conceived woman told a reporter, “I feel that I came into this world for the sake of my mother. After she died, I started wondering if I had a reason to exist anymore.” She continued, “I can’t overcome the feeling that I wasn’t exactly born, but *made*.” (italics in article) See Tomoko Otake, “Lives in limbo,” *The Japan Times*, August 28, 2005, online edition.



49. Many donor-conceived adults raise the problem of having an unknown number of unknown half-siblings, both because they want to know about their other blood relations in their quest to understand who they are, and because they fear unknowingly dating one of them (or their future children unknowingly dating offspring of one of their half-siblings). Since many children close in age could be conceived from the same sperm donor and live in relative proximity to the sperm bank, and since sharing half your genetic make-up with someone might make them seem especially “familiar” and attractive (especially if you did not know they were your blood relation) the fear of unknowingly dating a half-sibling is not unfounded. At the Family Scholars Blog, Narelle Grech, a donor-conceived adult, asks, “In the future, will we all have to have a DNA test when we start dating someone, ‘just in case?’” In a news article, one mother who used donor insemination says optimistically that her son will simply need to get DNA tests of partners once he starts “dating seriously.” See Kay Miller, “The legacy of donor 1047,” *Minneapolis Star Tribune*, August 21, 2005, online edition.

50. Dear Abby, *San Jose Mercury News*, January 2, 2005, web edition. In a terse, two sentence reply, Abby told the girl that the sperm donor “was doing a noble deed” and there is “no way to trace his identity.”

51. The response is akin to those who suggest to children of divorce that they should be grateful for their parents’ divorce because without it they would not have the new half-brother or half-sister who was born in a subsequent marriage. There is no rational or compassionate basis for suggesting to someone who is struggling to tell their own story that to do so is to wish away the existence of a human life, their own or someone else’s.

52. Blaine Hardin, “2-Parent Families Rise After Change in Welfare Laws,” *New York Times*, August 12, 2001.

53. For full citations, see *Why Marriage Matters: 26 Conclusions from the Social Sciences, 2nd edition* (New York: Institute for American Values, 2005). See also Robin Fretwell Wilson, “Evaluating Marriage: Does Marriage Matter to the Nurturing of Children” (*San Diego Law Review*, volume 42: 847-881, 2005).

54. Girls in stepfamilies are slightly more likely to have a teenage pregnancy compared to girls in single-parent families, and much more likely to have a teenage pregnancy than girls in intact, married families. Children who grow up in stepfamilies are also more likely to marry as teenagers, compared to children who grow up in single-parent or intact, married families. (See *Why Marriage Matters*, footnotes 36 and 37.) In regard to educational achievement, children whose parents remarry do not fare better, on average, than do children who live with single mothers. (See *Why Marriage Matters*, footnote 84.) One recent study finds that boys raised in single-parent homes are about twice as likely, and boys raised in stepfamilies are more than two and a half times as likely, to have committed a crime that leads to incarceration by the time they reach their early thirties. (See *Why Marriage Matters*, footnote 130.) Teens in both one-parent and remarried homes display more deviant behavior and commit more delinquent acts than do teens whose parents have stayed married. (See *Why Marriage Matters*, footnote 131.) Children living with single mothers, mothers’ boyfriends, or stepfathers are more likely to become victims of child abuse. (See *Why Marriage Matters*, footnotes 153-155.)

55. Some same-sex marriages will involve children from previous unions and in that sense will be very much like stepfamilies. Other same-sex marriages that form before children are born or adopted might in some ways parallel an intact, heterosexual marriage, but even in these unions at least one parent will not be a biological parent to the child, much like stepfamilies (or heterosexual adoptive families).

56. Robin Fretwell Wilson writes, “These studies of fractured families differ in their estimates of the percentage of girls molested during childhood. However, regardless of whether the precise number is 50% or even half that, the rate is staggering and suggests that girls are at much greater risk after divorce than we might have imagined.” She continues, “Despite these studies, the idea that so many girls in fractured families report childhood sexual abuse strains credulity. Nevertheless, with more than seventy social science studies confirming the link between divorce and molestation, there is little doubt that the risk is indeed real. As difficult as it is to accept, a girl’s sexual vulnerability skyrockets after divorce, with no indication that this risk will subside.” In “Children at Risk: The Sexual Exploitation of Female Children after Divorce,” 86 *Cornell Law Review* 251: January 2001, p. 256.

57. Joseph H. Beitchman, et al, “A Review of the Short-Term Effects of Child Sexual Abuse,” 15 *Child Abuse and Neglect* 537, 550 (1991), cited in Robin Fretwell Wilson, footnote 9.

58. Martin Daly and Margot Wilson, 1996. “Evolutionary Psychology and Marital Conflict: The Relevance of Stepchildren,” in *Sex, Power, Conflict: Evolutionary and Feminist Perspectives*, eds. David

M. Buss and Neil M. Malamuth (Oxford: Oxford University Press): 9-28, cited in *Why Marriage Matters: Twenty-One Conclusions from the Social Sciences*, published by the Center of the American Experiment, the Coalition for Marriage, Family and Couples Education, and the Institute for American Values (2002).

59. Cites W.D. Hamilton, "Significance of paternal investment by primates to the evolution of adult male-female associations, in D.M. Taub, ed., *Primate Paternalism* (New York: Van Nostrand, 1964), pp. 309-335.

60. Cites M.S. Smith, "Research in developmental sociobiology: Parenting and family behavior," in K.B. MacDonald, ed., *Sociobiological Perspectives on Human Development* (New York: Springer-Verlag, 1988), pp. 271-292.

61. David Popenoe, "The Evolution of Marriage and the Problem of Stepfamilies: A Biosocial Perspective," in Alan Booth and Judy Dunn, eds., *Stepfamilies: Who Benefits? Who Does Not?* (Hilldale, New Jersey: Lawrence Erlbaum Associates, 1994), pp. 3-27.

62. See "Do Mothers and Fathers Matter? The Social Science Evidence on Marriage and Child Well-Being," iMapp Policy Brief, February 27, 2004 (Washington, D.C.: Institute for Marriage and Public Policy), which includes full citations.

63. Affidavit of Stephen Lowell Nock, *Halpern v. Attorney General of Canada*, No. 684/00 (Ont. Sup. Ct. of Justice).

64. See "Do Mothers and Fathers Matter? The Social Science Evidence on Marriage and Child Well-Being," iMapp Policy Brief, February 27, 2004 (Washington, D.C.: Institute for Marriage and Public Policy).

65. Approximately two-thirds of divorces end low-conflict marriages; about one-third of divorces end high-conflict marriages. See Paul R. Amato and Alan Booth, *A Generation at Risk: Growing Up in an Era of Family Upheaval* (Cambridge: Harvard University Press, 1997), p. 220.

66. "Family Vacation," by Michael Leahy, *Washington Post Magazine*, June 19, 2005, online edition. Examples of other media coverage of the same story includes, "Anonymous Sperm Donor Meets Kids," CBS News, New York, August 23, 2005, online at [www.cbsnews.com](http://www.cbsnews.com).

67. See [www.parentsincluded.com](http://www.parentsincluded.com).

68. <http://groups.yahoo.com/group/to-parent/>. Note that the term "co-parent" evolved amid the divorce revolution as mothers and fathers were urged to be effective "co-parents" in the wake of their split. The term is now also commonly used to describe situations in which two or more men and women (who may be gay or straight)—long before the birth of a child—plan to conceive and raise a child together without being in a romantic relationship with one another and usually without living together.

69. The ad listed a PO Box and advised, "Must be white, in good health, no family history of ADD or ADHD please." Website viewed July 12, 2005.

70. "Baby Mamas," by Rodney Thrash, *St. Petersburg Times*, May 6, 2005 online edition.

71. "All About Eves," by Anne A. Jambora, *Philippine Daily Inquirer*, May 8, 2005, online edition.

72. See Sara Butler Nardo, "De Facto Parenthood: The reformers' latest unwholesome innovation in family law," *The Weekly Standard*, March 6, 2006. She argues the courts are operating on a "circular definition" in which "a parent is a person who performs the function of a parent...." In November 2005, Washington State was the most recent to award psychological parent status to a parent's ex-partner (in this case, a mother's ex-girlfriend); the opinion is available here <http://www.courts.wa.gov/opinions/?fa=opinions.opindisp&docid=756261MAJb>. For a rebuttal to the Nardo article, see Dahlia Lithwick, "Why courts are adopting gay parenting," *Washington Post* opinion piece, March 12, 2006, B02.

73. See Po Bronson, "Are Stepparents Real Parents?," *Time Magazine*, May 17, 2006, online edition, for an examination of the Washington State de facto parent case and its implications for the approximately one-third of Americans who live in stepfamilies.

74. Frances Gibb, "Mother loses her children to former lesbian partner," *The Times Online*, April 7, 2006.

75. Of course it is heartbreaking to see a parent alienate a child from someone to whom the child is close. Unfortunately, it can happen in all kinds of situations, for instance, when mothers alienate their children from their ex-husband's parents; parents alienate their children from loving aunts or uncles; parents abruptly dismiss nannies who the children have come to love, and so on. The law is largely unable to heal these disappointments, and the attempt to do so—with the state intervening further in private decisions made by mothers and fathers that are not resulting in abuse or neglect of



children—is likely to do children overall more harm than good. Further, if same-sex couples in some states are encountering discrimination in accessing second-parent adoption (that is, if they are finding the process more onerous than heterosexual couples pursuing the same status), or if the option is not available in some states, then the appropriate response is to fix the problems in second-parent adoption and not to resort broadly to an entirely different, after-the-fact category called “psychological” parent.

76. A company called Family Evolutions in New Jersey, owned by a lesbian couple with children, has created a t-shirt and bib for children which reads, “My Daddy’s Name is Donor.” (Their young son is pictured in the t-shirt on their website.) See Elizabeth Marquardt, “Kids need a real past: Children with donor parents suffer when those raising them downplay their origins,” op-ed in *Chicago Tribune*, May 15, 2005. Available at <http://www.americanvalues.org/html/donor.html>.

77. “Egg donor has parental rights, courts say,” AP article in *Pittsburgh Post-Gazette*, September 10, 2005, online edition.

78. In the United States, Harvard University recently announced plans to begin privately funded stem cell research, joining the University of California at San Francisco and a few private companies. These teams are working to clone human embryos that are genetically matched to patients.

79. Increasingly the distinction between “therapeutic” and “reproductive” cloning appears to be dropped in the media—and, to hear some tell it, only extreme conservatives oppose cloning. For instance, on NPR the scholar Alan Wolfe said that Pope Benedict is on the “far right” because he opposes, among other things, “cloning.” Similarly, in a column Maureen Dowd said that one of the many serious concerns about the new Pope is that he “once called cloning ‘more dangerous than weapons of mass destruction.’”

80. Alok Jha, “Process holds out hope for childless couples,” *Guardian*, May 20, 2005, online edition.

81. *Ibid.*

82. A young woman in Britain recently died from ovarian hyperstimulation syndrome (OHSS), the most common high-risk side effect of egg donation. Another young woman who developed OHSS and suffered a stroke and brain damage just won a large lawsuit in Britain.

83. Mark Henderson, “Cloning team calls for IVF egg donations,” *Times Online*, May 31, 2005; “Cloning research egg donor plan: women could be allowed to donate their eggs for therapeutic cloning research under new rules to be considered by fertility watchdog,” BBC News Online, February 14, 2006. In July of 2006 the fertility regulatory authority granted a team of scientists from Newcastle and Durham Universities permission to contribute to the costs of a patient’s IVF treatment in return for receiving some of her eggs for use in therapeutic cloning research. See Andrew Douglas, “Human egg donor boost for stem cell research,” *The Northern Echo*, July 27, 2006, online edition.

84. In Japan in 2004, scientists created a mouse from the genetic material of two females—in other words, a mouse with two genetic mothers and no genetic father. To do so, they created over 450 embryos of which 370 were implanted and ten were born alive. Only one survived to adulthood. The others died of a range of birth defects. See Bijal P. Trivedi, “The End of Males? Mouse Made to Reproduce Without Sperm” *National Geographic News*, April 21, 2004, online edition. How can anyone even consider experimenting with human embryos and children in this way?

85. James Meikle, “Sperm and eggs could be created from stem cells, says new study,” *Guardian*, June 2, 2005, online edition.

86. Maxine Firth, “Stem cell babies could have single parent,” *New Zealand Herald*, June 21, 2005, online edition.

87. Milanda Rout, “Doing away with donors,” *Herald Sun* (Australia), June 21, 2005, online edition.

88. “Stem cell research may provide hope to gay couples,” at [www.proudparenting.com](http://www.proudparenting.com), June 30, 2005. An example of news coverage later in the year included Hannah Seligson, “Science’s hope of two genetic dads; stem cell research could soon enable both partners in gay, lesbian couples to pitch in,” at *Gay City News*, September 8-14, 2005 issue, online edition. The article quotes a physician (not involved with the research) saying that “gay and lesbian couples often have to ‘deal with the issue of not being a genetic parent and that can be tough for that parent.’” The reporter writes, “The hope is that this new discovery could alleviate that component of stress for gay and lesbian couples starting families.” The article does not address the possibility of serious health (or other) risks for these embryos or children.

89. Roger Highfiel and Nic Fleming, "Scientists create human embryo without a father; source of stem cells: 'virgin' territory for British researchers," *The Daily Telegraph*, September 10, 2005, online edition.

90. Mark Henderson, "Scientists win right to create human embryo with three genetic parents," *Times Online*, September 9, 2005.

91. In her article, "Where Babies Come From: Supply and Demand in an Infant Marketplace," *Harvard Business Review*, February 2006, pp. 133-142, author Debora L. Spar suggests that market regulation of the fertility industry in the U.S. could, among other things, assure equity (for adults). She writes, "Legislators...could decide that having children is a basic right and that society therefore needs to find some way to provide at least one child to everyone who wants to be a parent." (p. 140) Spar does not claim necessarily to support this idea but neither does she oppose it. This suggestion is the clearest articulation yet of the adult right to a child, taken to its most logical—and chilling—conclusion.

92. When confronted by the specter of group marriage; increasing use of donor sperm and eggs or surrogacy; new advances in reproductive technology, and the like, some who support same-sex marriage argue that heterosexuals are almost wholly responsible for this revolution in marriage and parenthood given their rampant divorce, unwed childbearing, and initial use of sperm and egg donors and surrogates in reproduction. As Stephanie Coontz wrote in a *New York Times* op-ed ("The Heterosexual Revolution," July 5, 2005), "Gays and lesbians simply looked at the revolution heterosexuals had wrought and noticed that with its new norms, marriage could work for them, too." These critics are partly right. Heterosexuals have certainly done a fine job of messing with marriage and parenthood. (Most of my time is spent researching the impact of divorce on children.) But here is where the critics are wrong: None of the other legal and social changes so far have required a legal redefinition of marriage. Same-sex marriage requires legally redefining the institution with gender neutral terms that make law and culture unable to affirm children's real needs for their mother and their father (instead law and culture can only affirm that children need "two parents"). Because the vast majority of children in the population are born to heterosexuals, not homosexuals, silencing the dialogue about the importance of mothers and fathers will negatively affect mainly and overwhelmingly that far larger group of children. To raise the troubling and perhaps even unintended consequences of legalizing same-sex marriage is not meant to stigmatize same-sex couples raising children. These couples are and will continue to raise children. I do believe they need social and legal protections for themselves and their children and they should certainly *not* be denied the children born to them. But there could be significant unintended consequences for the vast majority of children born to heterosexuals when we edit mothers and fathers out of marriage and family law.

93. Much of this section was published in Elizabeth Marquardt, "The Future of Polygamy: Two Mommies and a Daddy," *Christian Century*, July 25, 2006.

94. Reid J. Epstein, "Whole lotta love; 'Polyamorists' go beyond monogamy," *Milwaukee Journal-Sentinel*, September 12, 2004, online edition.

95. Trevor Stokes, Columbia News Service, "A poly life: monogamy with more partners," *Chicago Tribune*, viewed February 24, 2006, online edition.

96. See Dan Cere, *The Future of Family Law*.

97. In a bid for greater public attention for their argument that marriage rights should be extended not just to same-sex couples but to any group of caring adults (who might or might not be in a conjugal relationship), 250 U.S. academic and social leaders (including many notables) released a statement at the end of July of 2006 titled "Beyond Same-Sex Marriage: A New Strategic Vision For All Our Families and Relationships." For the executive summary, full statement, and list of signatories, see [www.beyondmarriage.org](http://www.beyondmarriage.org).

98. See their website at <http://www.unmarried.org/>. "Hot topics" are listed at left.

99. See [www.uupa.org](http://www.uupa.org).

100. [Http://www.livejournal.com/community/polyamory/890327.html](http://www.livejournal.com/community/polyamory/890327.html). For me, one of the most disturbing ideas in all this is the all-too-common assumption that when adults begin a sexual and/or live-in relationship they become "parents" to each other's already-born children. Children with single or divorced heterosexual parents will tell you that their parent having sex with someone does not make the child automatically see that person as a parent. Even marriage (as in stepfamilies) does not automatically create (legally or psychologically) a parent-child relationship. Trusting, parent-like bonds between stepparent and stepchild typically take time to form, if they form at all. Moreover, a stepparent must formally adopt a child in order to become a legal parent to that child (and before

the adoption can proceed the parental rights of the child's other parent must be revoked, a grueling process when undertaken by the courts).

101. [Http://www.livejournal.com/community/polyamory/890327.html](http://www.livejournal.com/community/polyamory/890327.html).

102. [Http://www.livejournal.com/community/polyamory/890327.html](http://www.livejournal.com/community/polyamory/890327.html). At the same site another mother writes that she has a "simple rule" for her 12 year old when he visits: "What happens at Mommy's house stays at Mommy's house if you want to keep visiting Mommy."

103. [Http://www.polychromatic.com/kids.html](http://www.polychromatic.com/kids.html).

104. [Http://www.polyamorysociety.org/children.html](http://www.polyamorysociety.org/children.html).

105. Elise Soukup, "Polygamists, Unite! They used to live quietly, but now they're making noise," *Newsweek*, March 15, 2006, online edition.

106. Felicia R. Lee, "Real Polygamists Look at HBO Polygamists; In Utah, Hollywood Seems Oversexed," *New York Times*, March 28, 2006, Arts Section, online edition.

107. Robert H. Frank, "Polygamy and the Marriage Market: Who Would Have the Upper Hand?," *New York Times*, March 16, 2006, Business Section, online edition.

108. John Tierney, Who's Afraid of Polygamy? *New York Times*, March 11, 2006.

109. Stanley Kurtz, "Polygamy versus democracy; you can't have both," *The Weekly Standard*, 06/05/2006, Volume 011, Issue 36, online edition. Stanley Kurtz's columns at *National Review Online* have documented many events and emerging arguments relating to polyamory and polygamy. See for example his column, "Big Love, from the Set: I'm taking the people behind the new series at their word," March 13, 2006 at *National Review Online*.

110. See Sylviane Agacinski, *Parity of the Sexes*, translated by Lisa Walsh, (New York: Columbia University Press, 2001), especially the chapter titled, "The Double Origin," pp. 99-110.

111. For a fuller discussion of this principle and the problems surrounding the redefinition of parenthood that accompanies the deinstitutionalization of marriage, see David Blankenhorn, *The Future of Marriage* (New York: Encounter Books, November 2006), especially the chapter titled "Goods in Conflict."



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