A Place for Fathers: Fathers and Social Policy in the Post-War Period

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The Welfare State Programme

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Editorial Note
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Abstract

This paper examines how fatherhood has been defined in the post-War period, with special reference to non-married fathers. Examples are taken from legislation and practice in the areas of adoption, custody, illegitimacy, reproductive technology and maintenance. Who is defined as a father, and for what purposes, and what is the resolution when conflicts of interest appear between fathers, mothers, children and the state?

There have been changes over time in the response to such issues. Expectations of fathers vary according to context. Statute and case law are often seen to pull in opposite directions. While the provision of cash by fathers has remained as an ideal, their role as carers has become increasingly valued. Perhaps the most powerful issue in shaping a role for fathers has been the increasing importance of the child welfare principle.
Introduction

The problem that arises with fatherhood is that while mothers are easily discernable, paternity is more tenuous. Societies have therefore been faced with the problem of tying men to mothers and children. Traditionally this has been achieved through marriage and the assumption of paternity within it, whereby a child was deemed to be the offspring of its mother’s husband.

However, marriage has undergone changes over time, both culturally and legally. In the past thirty years or so the rising divorce rate and falling marriage rate have posed a challenge to the ‘simple’ nuclear family of mother, child and only-ever husband. Many family groups now are not tied together through marriage, and there is the new phenomenon of step-parents and parents being around at the same time.\(^1\) These changes have consequently had huge implications for fathers themselves, and for society’s treatment of them. There has been a continued effort to tie fathers to mothers and/or children.

In this paper I will trace the changing expectations of fatherhood over time, concentrating particularly on non-married fathers (divorced, separated and unmarried). I will look at the various factors which affect ideals of fatherhood - thinking on parental rights, on child development, on fairness to the taxpayer, on democracy etc., and the priority given to these by policy-makers at different times. There are diverse sources of these ideas - rights groups, academics of various disciplines and political ideology.

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\(^1\) When marriage was broken by death a step-parent had a very different function and was not a threat to the ‘simple’ nuclear family.
The three areas in which fathers have been given a greater or lesser role have been the provision of cash, care and identity. To illustrate changes regarding cash provision I will deal primarily with private maintenance, but I will also look at the relationship between public and private maintenance. As illustration of changes in the caring role I will use the areas of custody, adoption and paternal responsibility. The issue of a father’s role in a child’s identity has arisen around adoption and reproductive technology. The issue of illegitimacy has had implications for both cash and care provision. The paper will show the legislative response to changing expectations, as well as the ground swell that preceded or followed any legal response.

Through an examination of expectations of the role of fathers it is claimed that several themes emerge:

1. Who is a father - biological link or social link?
The assumption of paternity within marriage is a device to fuse, perhaps falsely, biological and social fatherhood. Since fatherhood is less easily discernable than motherhood the assumption of paternity makes marriage theoretically of crucial importance to men. As Hoggett (1993: 27) argues:

The institution of marriage may well have been devised by early societies in order to establish a relationship between man and child (Mair, 1971)...whereas motherhood could be easily be proved, fatherhood could not. A formal ceremony between man and woman, after which it was assumed that any children she had were his, was the simplest method of establishing a link...A legal system which concentrates on the orderly devolution of property and status within patrilineal families therefore places great
emphasis on the institution of marriage and the
concept of legitimacy.
As family formations have increasingly broken out of the 'simple'
biological mould; fatherhood has been increasingly broken down
into its component parts. Divorce, re-marriage, adoption and
reproductive technology potentially separate biological and
social fatherhood.

2. The relationship of 'child welfare' to 'fatherhood'
The state has given children an increasingly central position in
the relationships between different parent-types, and between
these and the state. This is based on a definition of child welfare
which has changed over time. It has served in practice to give
'ide-married' (divorced and separated) fathers and unmarried
fathers marginal positions in the family with regard to care - the
rights of non-married fathers being secondary to both children
and mothers. The positions of each of these sub-groups in relation
to their families and the state are distinct. Unmarried fathers
continue to have a secondary position in statute, while divorced
and separated fathers are strongly tied in to their families in
statute, but are often excluded through case law.

For unmarried fathers the historical move has been from
exclusion from the family, to a secondary position to the mother.
For 'ide-married' fathers the shift was as pronounced, but in the
opposite direction - from total rights to secondary rights. For
de-married mothers the shift was even greater - from no rights to
primary rights. This is because her rights have been so closely
associated with the rights of the children. Unmarried mothers
have always had primary rights over children in relation to
fathers, but they have been subject to greater state intervention
than any other group of parents. Mothers' rights are bound up in the notion of mothers' responsibilities. Under the Poor Law for instance, giving an unmarried mother sole responsibility for her child was intended as a disincentive to unmarried motherhood. Since then non-married mothers (unmarried and divorced) have fought for sole legal responsibility for their children on the grounds that this is an accurate reflection of reality.

3. The 'cash provider' role for fathers
A father exists for all lone mother families apart from those of widows. Debates on the financial support of lone parent families have always taken this into account, which is one of the reasons widows have been given more generous treatment. But there have been two persistent tendencies in policies on fathers. The first is the prioritisation of the role of the non-married father as provider, rather than carer. The second is that for various reasons enforcement of paternal financial provision has always been weak. The two obvious reasons for this are inability to pay, and the existence of second families. In addition, the theory of fathers' responsibility to provide financially for their children has been more readily accepted by divorced parents than it has been by unmarried mothers or fathers, and this must affect compliance. Another cause for weak enforcement is the public law/private law divide discussed below.

4. The effects of the public/private law dichotomy
Private and public law may exhibit different preferences. For instance, public law may strongly uphold the principle of a father's obligation to maintain. But enforcement of this principle as applied by the courts may be weak. Similarly, statute may
strengthen the position of an unmarried father in applying to the courts for custody and access, but the trends of judicial outcome may show little support for this notion. This is due in part to the discretion enjoyed by the judiciary. The outcome of this discretion may differ from the principle laid down in statute because the systems involved in public and private law have a different logic. The judiciary, for instance, have no interest in keeping down public expenditure. They do, however, have an interest in sorting out individual cases as pragmatically as possible, and with the least chance of a later appeal. Each party’s legal advocate will want to either maximise their client’s resources or minimise their expenditure.

1950s - Focus on the Father as Economic Provider
During the 1940s and 1950s psychoanalytic writing on child development (eg. Bowlby, 1952; Winnicott, 1957) focused on the importance of the early years, so special emphasis was laid on the role of the mother. There was, in this period, a conflation of parenting, nurturing and mothering. Fathers were therefore given a marginal role (sometimes referred to by implication only) as the economic and social support of the nurturer-mother. This idea reinforced the notion that in custody cases younger children in particular were given into the mother’s custody - what in the US was called the ‘tender years’ doctrine.

The need of a child for a mother’s continuous presence encouraged mothers to stay out of paid work, and this required a male provider. Parsonian functionalism in sociology which appeared in the 1950s, also supported this family configuration. At the National Council of One Parent Families’ (NCUMC) Golden Jubilee Conference (1968) Louis Blom-Cooper asserted
that Bowlby’s theory was widely accepted because it followed the war during which fathers were absent, and better off mothers who previously had nannies and servants had been forced by circumstance to look after their own children. These mothers therefore were encouraged by Bowlby to make a virtue of necessity. One might add that working class mothers who had taken over men’s work were encouraged by Bowlby’s theories to move over and leave room in the job market for the returning soldiers.

These child welfare theories (sociological and psychological) focussed on married fathers. But in law unmarried fathers, like married fathers, were also expected to provide economic support for their families, and affiliation orders were the mechanism by which this was enforceable. Such orders relied on biological fatherhood, and required proof of paternity. It was proposed in the 1952 Affiliation Orders Bill that the period and amount of maintenance payable by unmarried fathers for illegitimate children should be equalised to that payable by divorced fathers for legitimate children. An objection was raised (as it has been since) that maintenance should reflect access. Mr Julius Silverman argued:

The position of the [putative] father is quite distinct from that of the father of a legitimate child. He has no right of access. Usually, he is deprived of any interest in the child whatever, and it does not seem entirely fair to place him in the same position as the father of a legitimate child...²

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² House of Commons Debates, 29th February 1952, col.1622.
(Incidentally, it is interesting to note the interpretation of 'fairness' that was used to support maintenance differentials for divorced and unmarried fathers. By the 1990s there was greater concern for fairness to the taxpayer whom the government believed should no longer be expected to subsidise child maintenance for the non-married of whatever status.) In practice at this time very few affiliation orders were made. One of the objectives of the NCUMC on its foundation in 1918 was to secure reform of the Bastardy and Affiliation Orders Acts. But in 1959, when there were 38,161 non-marital births, only 4,160 orders were granted (Macaskill, 1993). One of the reasons for the low number of orders was that they were dealt with under criminal proceedings in open Magistrates' Court. This was changed by clause 5 of the 1959 Legitimacy Act. Another reason for the low numbers of affiliation orders made according to Smart (1987), was the assumption of female mendacity which had been a persistent feature of paternity law since the Poor Law. Even in 1960 the Russell Committee Report on illegitimacy and inheritance (Russell Committee, 1960) was to assert:

There are grounds for supposing that there are cases in which the mother successfully selects the man who is the best prospect (quoted in Smart, 1987: 102).

Towards the end of the 1950s there were two changes in law which concerned the caring role of the unmarried father. Under the 1958 Adoption Act, the guardian ad litem had an obligation to notify the court of any father who wished to be heard, though the father had no right to a hearing. Under S.3 of the 1959 Legitimacy Act an unmarried father could apply for custody and access. These changes were surprising given the lack of importance given to the caring role for fathers in the psychology and social
work literature. It is possible that, reflecting the argument about maintenance and access, the caring role was supported as a way of encouraging financial responsibility. This linking of cash and care was to be used extensively in the 1980s and 1990s.

Legislation on legitimacy of children born of adultery was a potential threat to the "assumption of paternity". Who was to be defined as the father? The wife's first husband or her second? The 1959 Legitimacy Bill contained a clause saying that a child of adultery was to be considered a child of the family if the mother's husband (not himself the biological father) had accepted the child as one of the family. This clause was thrown out, perhaps because to assert paternity in the face of a public declaration of illegitimacy would serve to expose the device of the assumption of paternity. The notion of equity for children was later vital in dislodging old attitudes to illegitimacy. The rights of children weakened the rights of men to keep children contained within marriage.

1960s - A Place Given to Unmarried Fathers
The 1960s was a time of important changes in social attitudes towards marriage. Firstly, marriage was now seen as a more companionate arrangement, and secondly there was a separation of sex and marriage. But while sex outside marriage was becoming increasingly acceptable, parenthood outside marriage was not. The majority of pre-marital conceptions led to shotgun marriages (see Figures 1 and 2) and a woman who became pregnant, carried her pregnancy to term and didn't manage to 'catch her man' tended to be seen as feckless and irresponsible. One of the reasons for this was the great belief in the 1960s and 1970s in the availability and reliability of contraception, and the
Figure 1
Total (live) births, illegitimate births and births conceived before marriage (England and Wales)

Source: OPCS Birth Statistics, Series FM1

Figure 2
Illegitimate births and births conceived before marriage (England and Wales)

Figs from 1952: women married only once; figs from 1991 are of live births only.
ease of abortion\(^3\) - both giving women more responsibility for their own fertility.

Rather than focussing on the irresponsibility of the lone mother, Margaret Wynn’s work (1964) had a focus on fathers that was uncharacteristic of the time. The object of her policy proposals was the absent father. She claimed that fiscal and other financial arrangements provided an incentive for fathers to leave their families, or to remain unmarried (inferring that unmarried fathers were absent fathers). It was the father who should be given disincentives to absenteeism, and not the lone mother who was to be punished for her state.

As we have seen, the 1958 Adoption Act and the 1959 Legitimacy Act gave courts greater freedom to grant care to unmarried fathers. This interest in the unmarried father as carer continued in the Houses of Parliament in the 1960s - before it had widely entered the academic forum. In a debate in the House of Lords initiated by Baroness Summerskill on 22nd Feb. 1967 Lord Soper stated:

I am certain...that there is a real and viable place for a father, even if that father is not married to the mother.\(^4\)

Later in that debate Lord Wells-Pestell added:

I should like to see more encouragement given to the putative father to assume the responsibilities of parenthood than is given at present.\(^5\)

Lord Scarman, at the 1968 NCUMC conference said:

\(^3\) See, for instance, House of Commons Debates 12th February 1965.


\(^5\) Ibid., Col.750-751.
If, as his right, the unmarried father should have financial and property responsibilities in respect of the child, he should also be encouraged by the law to maintain human relations, the loss of which can be a tragedy not only to the child but to him too.

The same year Margaret Bramall, General Secretary of the NCUMC, wrote in the Annual Report:

The Council's founders wanted to make the responsibility of fathers effective, which to them meant that the man should pay towards his child's support. Today...we should aim higher. Paternal responsibility should transcend monetary liability...We must aim for equality of standards between men and women.

(quoted in Macaskill, 1993: 41)

At this time fatherhood was beginning to be seen as a factor contributing to child welfare. But fatherhood alone would not satisfy the 'child's best interests' principle. This was particularly the case for unmarried fathers. As we have seen, the 1959 Legitimacy Act (S.3) had extended the right to apply for custody and access to unmarried mothers and fathers. In court cases concerning an unmarried father's right to custody, a crucial point was often whether he had a better case than a third party to assume care and control of a child whose future guardianship was in dispute. In *Re Adoption Application 41/61 (1963) Ch.315* an unmarried father applied for custody at the same time as a third party applied for an adoption order. It was held that S.3 of the 1959 Act merely gave an unmarried father a right to apply for custody and access, and did not make his claim pre-eminent (Church of England 1966). In *Re O. (an infant) (1964) 1 All E.R. 787* Lord Denning declared:

The putative father is a person who is entitled to special consideration by the tie of blood, but not to any greater
or other right. His fatherhood is a ground to which regard should be paid in seeing what is best in the interests of the child; but it is not an overriding consideration. (quoted in Church of England, 1966, emphasis added)

As the Church of England noted in 1966:
This [welfare] right of the child was established before the statutory recognition of the putative father of a child as a person whose voice could be heard in custody and access cases. Thus the putative father came into the picture at a stage when it was arguable that it was too late for his rights to be tested in the courts as against those of the unmarried mother and of third parties. At the time his existence was legally recognised the child had been established as the one whose rights were the first and paramount consideration. (Church of England, 1966: 37, emphasis added)

Smart (1989) has suggested that there are two competing discourses in the issue of custody - rights and welfare. Both men and women have been forced to argue for rights over children on the grounds of child welfare as this has grown to dominate parental rights in statute and case law. (The other area in which men’s, women’s and children’s rights are in competition is reproduction. In the areas of abortion and reproductive technology in US case law, men have succeeded in curbing women’s autonomy over reproduction on the basis of foetal rights. In British legislation however, individual men’s control over women’s fertility has become unacceptable.)

1970s - A Re-evaluation of Parenthood
In the 1970s three important social trends became apparent. The first was the rise in female labour force participation. The second
was the rise in the illegitimacy ratio, and the third was the rise in divorce. This was the background against which a re-evaluation of parenthood took place with regard to both cash and care provision.

During the 1970s, psychological theories on the role of fathers proliferated. Psychologists espousing the social learning theory, examined the father’s role in reinforcement and punishment, identification and imitation. These were said to be crucial to the development of sex roles, morality, intellect, social competence and psychological adjustment (Lamb, 1981). Delinquency and Parental Pathology (1960) by Andry had been ahead of its time. In it Andry challenged the maternal deprivation assumption, and indeed his study found that

...the prime differentiating feature between delinquents and non-delinquents, as far as parental role playing is concerned, is the delinquents’ perception of their fathers’ role as being negative.

This finding, without denying the importance of the mother’s role in the aetiology of delinquency, does, for the type of delinquent examined, tend to deny the absolute supremacy of the mother’s role. (1960: 127)

By 1974 Kellmer Pringle claimed:

Fathers can make an indispensable contribution to the psychological development of their children, daughters as well as sons. The importance of the mother-child relationship has been so much stressed in recent years that it almost seemed fathers need merely to provide material things for their offspring. (From The Needs of Children, quoted in Barber, 1975: 43)

This new realisation of the caring role that could be undertaken by fathers affected attitudes to paternal custody. The
first conference on who should receive custody took place in 1971\textsuperscript{6}. The pressure group Families Need Fathers was founded in 1974 as a reaction to what non-custodial fathers saw as discrimination by the courts.

**The Father's Importance to the Child's Identity. First or Second Families: The case of adoption practice**

The idea of the importance of the father to a child's development also played a major part in changes in adoption law. There had been a growing appreciation among adoption personnel since the 1950s\textsuperscript{7}, of the importance of a degree of openness about a child's background for the formation of a sense of identity - a newly discovered issue in child welfare. Reluctance to sever links with the non-custodial parent was already being shown in custody cases. Furthermore, in custody cases child welfare was held to be paramount. The connection was now made between disputed custody and contested adoption cases. By the late 1960s contested adoption cases had also begun to show concern about child welfare. Though still not of paramount importance in adoption law, courts began to consider the child welfare ideal in all situations, and this included ideas on identity and genetic background.

This thinking was particularly germane to adoption by step-parents. In 1969 the Association of Child Care Officers published their report *Adoption: The Way Ahead*. This influential

\textsuperscript{6} Leader in *The Guardian*, 1.5.1971, referred to in George and Wilding (1972).

\textsuperscript{7} BAAF Standing Conference of Societies Registered for Adoption, Bulletin no.3, May 1952.
report upheld that step-parent adoption was “an artificial and unnecessary arrangement”, and said it should be replaced by a form of guardianship. The Home Office asked the Standing Conference of Societies Registered for Adoption to report on the workings of current adoption law. Meanwhile it became evident from the early 1970s that following the 1969 Divorce Act the rate of remarriage was growing rapidly. From 1971, when the Act came into effect, the numbers of children adopted by a parent and step-parent rose dramatically (see Figure 3).

The Houghton Committee, which began work in July 1969, were concerned that step-parent adoption in cases where the natural father was still living, was an unnecessary severance of the blood tie. The Committee had recommended in their Working Paper (1970) that the adoption of children by one natural and one step-parent should be disallowed in the case of legitimate children, in other words where the natural parent was divorced or widowed. Reaction to the working paper made them change their mind, and their report (1972) recommended equal treatment of illegitimate and legitimate children (para 105-110). But the final legislation (Part I of the 1975 Children Act) reflected the original concern about natural families. A new order (the Custodianship Order) was introduced to give an alternative option to step-parents. And S10(3) provided that the court should dismiss an application by a parent and step-parent “if it considers the matter would be better dealt with under section 42 (orders for custody etc.) of the Matrimonial Causes Act 1973.” Furthermore, under the 1975 Act, adoption by a lone natural parent was not allowed unless justifiable to the court (S11(3)). This followed the discovery that natural parents were adopting their children in order to sever all legal connections between the child and the
Figure 3

Adoption of legitimate children
(England and Wales)

Parental relationship not recorded from 1985 on.
Sources: Registrar General's Statistical Review to 1973; OPCS FM3 Series 1974 onwards

Adoption of illegitimate children
(England and Wales)

Parental relationship not recorded from 1985 on.
Sources: Registrar General's Statistical Review to 1973; OPCS FM3 Series 1974 onwards
other parent. A further provision aimed at aiding the adopted child’s sense of identity was that over 18 year-olds could look up their parentage for the first time (S.26(1)).

*Fathers’ financial responsibility - first or second families?*

The increase in second families, forecast to accelerate after the 1969 Divorce Reform Act forced a consideration of which family a father (biological or social) was bound to maintain. In *Roberts v. Roberts* [1970] P 1, the court considered whether a man’s support of a new partner and her children was a ‘relevant circumstance’ for consideration in calculating his maintenance obligations to his first family; and if so, how and to what extent it should be taken into account. The court found that no hard and fast line could be drawn between legal and moral obligations, and concluded that when fixing the amount of maintenance...a court is entitled (indeed is bound) to have regard to all the relevant circumstances of each particular case, including obligations and advantages which may not be legally enforceable (referred to in Finer: 7-8).

On the second point they concluded that there was no point making orders that were unlikely to be paid.

The *impracticality* of enforcing obligations to first families which left second families in need of state support had been noted as long ago as 1953 in the National Assistance Board’s Annual Report. The operation of public maintenance to leave a man free to support his *de facto* family was also based on a ‘moral’

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8 Referred to in Finer (1974), para 4.182. No further reference given.

9 Cmd 9210, p.18-19.
argument. In 1971 the Supplementary Benefits Commission concluded that to pay support for the children of a cohabiting woman

would be inconsistent with the [1966 Social Security] Act and repugnant to the general view of family responsibility... [It] would act as a disincentive both to marriage and to acceptance by the man of responsibility for all the children. (Supplementary Benefits Commission, 1971: 10)

It would, however, consider paying for the children if it felt that not to do so would mean hardship for them, or the breakup of the adults' relationship. The Commission aimed, it said, to reach a fair decision in each case, balancing the demands of the couple, the children and the community as a whole.

The Finer Committee was set up in 1969. At this time it was becoming clear that there was a growing polarisation between the incomes of one and two parent families. What was more, the percentage of illegitimate births to total live births was increasing (see Figure 4) and following the 1969 Divorce Act it was likely that divorced lone parents would also increase. The Finer Report, published in 1974, acknowledged the tension between public law which (by way of the cohabitation rule) assumed that a man supported the family with whom he was currently living, and private law, which had traditionally sought maintenance for the family whom he had left (Lewis, 1995). Finer accepted state responsibility, albeit as an underpinning for private maintenance, rather than as a replacement for it:

The fact has to be faced that in a democratic society, which cannot legislate (even if it could enforce) different rules of familial behaviour depending on the ability to pay for the consequences, the community has
to bear much of the cost of broken homes and unmarried motherhood. (para 4.24)

Figure 4
Illegitimacy ratio (England and Wales)

Difficulties with state enforcement of a father's duty to maintain his family had been encountered since the inception of the post-war system. Annual reports by the National Assistance Board (NAB) and later by the Supplementary Benefits Commission, show that difficulties persisted for three recurrent reasons. One was the difficulty in tracing an absent father; second, was his inability to pay (often due to the existence of a second family); and third was the fact that "constant vigilance" was needed to secure payments. This was an expensive process, and even prison sentences were not always a deterrent. In the

1980s it was claimed that each year the state "writes off" 37% (£27 million) of the total amount ordered or agreed to be paid by liable relatives (Private Communication from the DHSS referred to in Eekelaar, 1988).

A series of economic crises, along with a growth in the number of welfare claimants meant that Finer's proposal for a generous new state benefit was not implemented (Maclean and Eekelaar 1993). So at this time for economic, moral and practical reasons a father's duties towards his de facto family were maintained, while the state continued to underwrite the costs of first families, though not in as overt a fashion as Finer had recommended.

**Cash provision and fathers' identity**

The Supplementary Benefits Commission paid an allowance to fathers who leave work to care for children on the death or desertion of the mothers "if there is no reasonable alternative to his remaining at home, so that they can stay at home to care".\(^{11}\) George and Wilding's (1972) study showed that very few fathers who applied were refused Supplementary Benefit. Despite the availability of benefit, and the 'fair' or better treatment by benefit officers the fathers described, 64% of fathers in the study had been unhappy about receiving benefit. This reflected not only the system, but also fathers' expectations of themselves. Feelings of unease about claiming were more likely to be found in the divorced or deserted than in widowers.

\[^{11}\text{Communication from the DHSS, f/n 14, chapter 1, George and Wilding, 1972.}\]
There was also an expectation by the judiciary that lone fathers should be workers, which was still prevalent in the 80s. The case of B v. B, *Court of Appeal 5th Dec 1983* is an example. By consent an 11 month old baby was given into the father’s custody. Over two years later the mother applied for custody on the grounds that she was now settled with a new partner. The court agreed to the status quo. She appealed. Before the appeal the father had left his job because his employer had wanted him to do shift work. The Court of appeal upheld the status quo, but said it might have decided differently had the father deliberately given up employment to look after his child (*Families Need Fathers, 1985*). In another case, *B v. B (custody) Court of Appeal 30, 31 July 1984*12, an unemployed father looked after his child with help from the child’s grandparents. Two years later the mother sought and obtained custody. It was stated that “a father’s primary role is to work to his full capacity and generate resources to provide for his child and himself” (*Cretney and Masson, 1990: 521, f/n*).

The working patterns of married fathers are a strong indication of the expectations of fatherhood from employers as well as policy-makers and fathers themselves. The Study Commission on the Family (1983) noted the following findings. Employment rates tended to be higher for married than for unmarried men, and highest among married men with dependent children. Unlike mothers, the rate of fathers employment was not linked to the age of the youngest child. Also, the majority of fathers worked full time, and those with large

families worked longer hours than fathers of smaller families. Paid overtime was most commonly taken up by young married fathers. Fathers under 30 worked four times the amount of paid overtime as childless husbands. Non-married fathers' groups did not join campaigns aimed at equalising mothers' and fathers' position re. paid work and child-care. They did not join a campaign to prevent taxation on work-place creches, nor did they lobby for paternity leave, for flexible working time etc.. It therefore appears that even non-married fathers who are claiming their rights to care for children, are reluctant to give up their primary position as workers. As Brophy (1985) points out, they seem to require the perpetuation of a traditional relationship between parents.

In addition to the determination of a majority of fathers to be workers first and carers second, there are other reasons for fathers' subordination of their caring role. Research by Lund (1987) was based on a study of divorced/separated parents 2 years after the event, before the watershed time of 3 years when fathers tend to lose contact with their children. The study showed a number of reasons for loss of contact between divorced/separated fathers and their children. These were: the law, their own difficulty in dealing with the children's emotions and with their own emotions, hostility from and/or towards the other parent, and a genuine belief in a clean break. There were also structural problems such as distance, lack of funds and housing difficulties. A number of these problems had been evident in Wallerstein and Kelly's study undertaken in the 1970s (1980). Lewis and O'Brien (1987) took a critical look at the 'new father' and claimed that there was little evidence of his existence.
1980s and 1990s: Reconfiguring the relationship between family members, families and the state

During the 1980s and 1990s there have been important, though not entirely consistent, shifts in the relationship between the state and the family, as well as changes in the state's treatment of intra-family relationships. The main thrust of the changes has been to separate the ties between parents, and to strengthen the ties between unmarried and non-resident fathers and their children. The first two pieces of legislation dealt with here, the 1984 Matrimonial and Family Proceedings Act and the 1987 Family Reform Act, were strongly influenced by the work of the Law Commission. The last piece of legislation, the Child Support Act, is more heavily imbued with the political ideology of the government.

The separation of spousal and child maintenance - the 1984 Matrimonial and Family Proceedings Act

Ever since the implementation of the 1969 Divorce Reform Act, pressure had been growing from groups like Campaign for Justice on Divorce, Families Need Fathers and a host of individuals, for an overhaul of the maintenance system.\textsuperscript{13} Mr Rhodes James expressed a common concern in the House of Commons in March 1979 when he said that, "In my view, the law has now swung so far that the balance of advantage has tipped in favour of wives and against husbands in divorce cases"\textsuperscript{14}. One


\textsuperscript{14} House of Commons Debates, vol.964, col.1864.
of the factors was that from 1979 the courts had been empowered for the first time to transfer property from men to women as part of a divorce settlement (Maclean and Eekelaar, 1993).

The underlying dynamic of the Act was a power struggle between ex-partners. Husbands were claiming that women were having their cake and eating it too, demanding independence in the job market and support at home. In future divorced men wanted to be freed of their obligations to ex-partners, and with regards children they wanted to weaken mothers' position on custody and property. The arguments supporting the Act relied on the separation of obligations to mothers from those to children. Those opposed to the Act pointed out the impossibility of separating out the issues.

The Law Commission published a Discussion Paper in 1980 (Law Commission, 1980). The Discussion Paper made no reference to child welfare. It pointed out that numerous complaints had been received by the Commission and by MPs, commonly about the inconsistency of judgements, and the hardship to divorced husbands, divorced wives and second families. The Law Commission presented four main arguments for change. The first was about whether marriage was still regarded as a life-long commitment. The second was interesting because, like other arguments around this law reform, the focus was on partners and not parents. The argument ran that a lifelong obligation to maintain a spouse was linked to the notion of marriage as a contract. For this reason, spousal maintenance was like compensation for breach of contract. With 'no fault' divorce the idea of such compensation was outmoded. The other two arguments were that to restore the parties to the position they would have been in had the marriage continued (as per S.25 of
the 1973 Matrimonial Causes Act) was both impractical, and outmoded by women’s new economic status.

The same issues had arisen in the US, Canada and Australia which had reformed their maintenance laws a decade earlier (Eekelaar and Maclean, 1986). The Commission’s 1981 Report (Law Commission, 1981) recommended that courts should be provided with up to date information on the cost of maintaining a child, and that criteria be laid down for the division of financial liability for children between spouses. The other recommendations were that the financial support for children should be the ‘over-riding priority’, that self-sufficiency was to be promoted, and that where appropriate, ‘clean breaks’ were to be encouraged. It should be noted that the Law Commission’s use of ‘self-sufficiency’ implied the severance of dependency on the ex-spouse. Reference was made to current and potential earning capacity of the carer. The relationship between public and private maintenance, for instance whether independence from the husband was more or less important than independence from the state was seen as outside the Law Commission’s remit, though the Report stated that private maintenance could do little to alleviate hardship and deprivation.

In 1983 a Matrimonial and Family Proceedings Bill was put before parliament. It was a government Bill, and although it had received a good deal of public attention, they played down its significance. The Bill introduced the notion of ‘rehabilitative maintenance’ (maintenance payable for a limited period to allow a dependent to re-adjust to self-sufficiency) and the one off ‘clean

15 House of Commons Debates, vol.54, col.392.
break settlement’. It also stated that financial provision for children should be the ‘first consideration’. The underlying issue in the Bill was the separation of maintenance obligations to ex-partners from obligations to children. One of the reasons given for separating responsibility to children from that to partners was that if the maintenance system was seen by men as more just (which men were claiming it would be if partners were not supported) then they were more likely to pay the element for the children.\textsuperscript{16}

In fact, as the Law Commission had noted, very little evidence existed on maintenance rulings. From the evidence available (Doig, 1982; Maclean and Eekelaar, 1983; Davis, Macleod and Murch, 1983) it appeared that the major part of maintenance was paid for children, not spouses, and was set at very low levels. Evidence cited by the Family Policy Studies Centre in response to the 1983 Bill (Rimmer \textit{et al.}, 1983) showed that, rather than maintenance creating ‘alimony drones’, divorcees in receipt of maintenance were twice as likely to be in employment as those who got no maintenance. The Labour Party response to the Bill (Labour Party, 1984) was that

\begin{quote}
In most cases maintenance only makes a contribution towards the cost of raising children. It does not meet the living expenses of the wife or provide anything like the ‘meal ticket for life’ claimed by the Bill’s supporters... Yet the Bill will do nothing to alleviate the poverty of one parent families - through more realistic private maintenance orders, better enforcement of
\end{quote}

\begin{footnotesize}
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\item[16] Ibid.
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payments or state support by means of an adequate one-parent family benefit (*op cit*, p.2).
The argument against rehabilitative maintenance was that the majority of mothers had taken primary responsibility for child care, and in so doing had reduced their own employment opportunities and enhanced those of their partner. As a result of this division of labour women in work were still receiving lower wages than men. To throw them back into the sea and expect them to swim with the rest was unreasonable. These arguments, which had been raised in the 1980 Law Commission Discussion Paper, were supported by such groups as the Family Policy Studies Centre, Rights Of Women (ROW), Gingerbread and NCOPF. Families Need Fathers, on the other hand, claimed that rehabilitative spousal maintenance should be payable for a limited period only, and that both parties had an ongoing responsibility for child maintenance as well as custody. A survey of members of the Campaign for Justice in Divorce concluded that conduct should be taken into account when deciding spousal maintenance, though not child maintenance (Goldie, 1985).

In 1984 the Matrimonial and Family Proceedings Bill was passed by parliament. The separation of spousal- from child-maintenance was eventually won on the basis of child welfare (since it was deemed that maintenance for children would then be paid more regularly). But the Act also relied on the perception of women's greater financial independence. Decomplementarity was therefore seen in a positive light, and the state took the opportunity it presented to free men from lifelong obligations to ex-spouses.

In addition to the provisions already mentioned, maintenance for a spouse was linked (as in the 1973 legislation)
to conduct. However, under the 1984 Act custody and property allocation were also linked to conduct if the court believed that it would be inequitable to disregard it. The Law Society and others predicted that this would mean that conduct would always have to be considered in order to assess whether or not it would be inequitable to disregard it (Alcock, 1984). This is at odds with children’s best interests as upheld nominally by this Act and later by the 1989 Children Act. A few years later the notion of separating spousal and child maintenance was rejected. The Child Support Act included a controversial fixed allowance for the ‘parent with care’.

A battle of rights: Unmarried parents and the welfare of children - the 1987 Family Law Reform Act

The 1987 Family Law Reform Act was to give important legal recognition to unmarried fathers. The debate that preceded it centred on the rights of unmarried mothers versus unmarried fathers. Both groups based their claims on the welfare of children. Policy makers showed a reluctance to equalise the position of married and unmarried fathers, but wanted to equalise the position of children.

If the institution of marriage is a legal device to bind together fathers and children, then it follows that it is only the father of a legitimate child who is granted parental rights automatically. To abolish the distinction between legitimate and illegitimate children could mean that all fathers would have automatic rights. A Law Commission Working Paper in 1979 (Law Commission, 1979) had called for the introduction of automatic paternal responsibility. The National Council of One Parent Families (NCOPF, 1980) had that any increase in the significance of
paternity that made women reluctant to name the father would rob the child of important knowledge about their origins, now established as an important factor in child welfare. Also, the reduction in maintenance payments consequent on undeclared paternity would lead to even greater poverty. In addition, shared legal responsibility did not reflect the reality of daily practical responsibility. The Law Commission Report on illegitimacy that followed in 1982 (Law Commission, 1982) asked whether it were possible to classify fathers of illegitimate children into those entitled to legal rights and duties and those not so entitled. They decided that the various classifications possible were all too crude. However, there were four main areas of concern arising from the automatic granting of paternal rights to all unmarried fathers. Firstly, as NCOPF (1980) and Rights of Women (1980) had pointed out, it could make the mother more reluctant to acknowledge the father. Secondly, in those cases where the mother had a new partner they may feel threatened and take drastic action to cut the father out completely (i.e. by adoption). This was another way in which the biological links could be severed in a way harmful to children. Thirdly it may make the mother more vulnerable to pressure from the father. Fourthly, the illegitimate father would have greater power vis-a-vis third parties like the local authority.

An alternative to automatic paternal rights which gained wider support was the possibility of legal recognition by a father of his illegitimate child. This had been aired since the 1960s in the House of Lords, by Lord Scarman at the 1968 NCOPF

Conference and by the Church of England Board of Social Responsibility in their 1966 Report. Scottish Law already embraced such a notion. In 1980 it was supported by NCOPF and ROW in their responses to the Law Commission’s 1979 Working Paper. The Commission rejected the proposal that an official ceremony should be introduced to allow unmarried couples to share legal parental rights without going to court. This was rejected on the grounds that there was a “widely felt anxiety lest the institution of marriage be further eroded by blurring the legal distinction between marriage and other relationships” (para. 4.8).

The 1982 and 1986 Reports (Law Commission, 1986) on illegitimacy led to the 1987 Family Law Reform Act. Shared parental responsibility orders were introduced for unmarried parents, though only by way of a court order. The Act removed all legal provisions which affected the illegitimate child’s position, while maintaining the distinction between fathers of legitimate and illegitimate children. As we have noted, the legal distinction between marriage and non-marriage vis-a-vis children is not made between married and unmarried mothers, but only between married and unmarried fathers. Also, as Bainham (1988) pointed out, the child welfare ideal could be supported, rather than threatened, by the granting of automatic paternal rights. It is not, Bainham claimed, in children’s interests to maintain a distinction between married and unmarried parenthood.

A policy of placing obstacles in the way of the creation of initial paternal relationships is, it is suggested, irreconcilable with the policy of fostering the continuation of such relationships in the case of divorcing parents (op cit, p.42).

The debate around the 1987 Act was about whether child welfare was best supported by eradicating the status of
illegitimacy for children, or by enhancing the status of the unmarried father. Automatic paternal responsibility was seen either as helping or hindering child welfare according to the protagonists. The solution arrived at was to maintain the discretion of the courts in deciding which fathers were to be given a direct legal link with their children on a case by case basis. The status of children was equalised, and the term ‘illegitimate’ was wiped from the statute book. In other words, children whose parents were not married to each other at the time of their birth have as many claims on their unmarried fathers as children of marriages have on their married fathers. The status of marriage is maintained by keeping the legal position of married and unmarried fathers distinct, and the courts will determine the father-child relationship in the light of the child’s rights, not the father’s.

'Parental responsibility' and the issue of care - The 1989 Children Act

The Children Act of 1989 was a watershed in legislation on children. It also marks a dramatic change in the relationship between the state and families and the state’s treatment of intra-family relationships.

The Children Act attempted to balance two contradictory calls - greater child protection and therefore greater state powers on the one hand, with greater parental autonomy from the state on the other (Frost and Stein, 1990). As the Introduction to the Children Act notes:

The Act seeks to protect children both from the harm which can arise from failures or abuse within the family and from the harm which can be caused by
unwarranted intervention in their family life. There is a tension between those objectives which the Act seeks to regulate so as to optimise the overall protection provided for children in general (Department of Health, 1989, para 1.31).

The Act marks a shift from emphasis on parental rights to parental responsibility. Under the Act, unmarried fathers can apply for parental responsibility, and with the agreement of the mother can obtain parental responsibility without the need to go to court. During the first eight months of the Act’s enforcement 1,510 parental responsibility agreements were registered, and 1,282 parental responsibility orders made by the courts (Hoggett, 1993). The Act provides that the welfare of the child is ‘paramount’ in all court proceedings. As we have seen, children’s rights had been embodied differently in different areas of law over time.

While the Child Support Act was to tie ex-partners together re. cash, the Children Act loosened the bonds re. care, making each parent theoretically independent of the other. Living arrangements for children whose parents live apart are organised on a more flexible system than the previous ‘custody’, ‘care’ and ‘control’ system. Neither party now has sole power and authority. There are instead residence orders, contact orders, specific issue orders and prohibited steps orders (things either party cannot do without the consent of the other) which settle concrete issues, but do not detract from the enduring parental responsibility (Department of Health, 1989).

Brophy (1989) argues that the 1989 Act reduced the power of women. Child-care responsibilities for a woman usually necessitate a complete re-ordering of her labour market activity. This does not apply to men. Given this, shared responsibility (each parent being autonomous in their own time) is not a
reflection of reality. Such equality, she argues, should only be
given when the actual burden of responsibility is equalised; and
this falls outside legislation on parental responsibility alone. This
is a repetition of the arguments that arose against automatic
paternal responsibility at the beginning of the decade. Bainham
(1990) sees the Act in the opposite light. Whereas the old law
could grant a joint custody order, which required joint decisions
between parents, the new law means that an absent parent cannot
intervene in his child's upbringing without a court order. Bainham sees this as a regrettable block to joint parenting
(Eekelaar, 1991).

The Children Act considerably raised the status of children.
As Eekelaar notes (1991), the State now assumes that the welfare
of children is best served through the operation of parental
responsibility, and that parental responsibility will operate best
with minimum state intervention. The state has retained powers
to intervene where it believes that parental responsibility is not
being exercised, though the reports and the parliamentary
debates following them rested on the 'disease model' of child
abuse rather than on a structural model. State intervention was
therefore seen as legitimate, since it only applied to dysfunctional
families; but structural (economic) change was not attempted,
and the sections of the Act which aim to prevent problems (by
providing a range of facilities) have not been matched by the
provision of extra resources.

**Fathers and the New Right**
The New Right has put the post-war treatment of lone mothers
(and consequently of fathers) of all types in the spotlight. Moral
and economic arguments have been used to attack lone parents
themselves, and also the state’s treatment of them. There is a tension in the New Right between conservative paternalism and libertarianism. ‘The family’ is caught in the middle of this tension. While conservatives support the idea of the family, libertarians uphold the importance of the individual. But the family is vital to the libertarian ideal in that it has the potential to reduce the role of the state and its expenditure.

In the 1980s the New Right’s concerns about ‘the death of the family’ revolved around two main issues - public expenditure and the socialisation of children. A concern about the alienation of men arose later, in the 1990s. These worries resulted in greater importance being attached to fathers. Fathers’ role as providers was seen as essential. Fathers were also seen as crucial to socialisation, though the government’s opting out of the Social Chapter of the Maastricht Treaty, with its provisions for parental leave, highlight the fact that it was the father as provider, and not the father as carer that was seen as desirable. Crime was linked to the growth in ‘fatherless families’, and the ‘yob culture’ was said to be the result of a lack of discipline at home and the lack of a breadwinner role model. The Welfare State was also given its share of the blame. It had created a dependency culture and stripped the family of its traditional responsibilities. But implicit in this view of the family was an assumption about the gendered nature of family responsibility reminiscent of the 1950s and before. As Michael Howard said in a speech to the Conservative Political Centre (1993):

If the state will house and pay for their children the duty on [young men] to get involved may seem removed from their shoulders...And since the State is educating, housing and feeding their children the
nature of parental responsibility may seem less immediate (Howard, 1993).

Or as the American academic Gilder (1981) claims:

[The man] has been cuckolded by the compassionate state (ibid: 115).

A father's duty to maintain was argued not only on the grounds of socialisation, but also on the grounds of fairness to the taxpayer:

...when a family breaks up, the husband's standard of living often rises whereas that of his wife and children falls, even below the poverty line. Taxpayers may then be left to support the first family, while the husband sets about forming another. This is wrong. A father who can afford to support only one family ought to have only one (leader in The Economist, 9.9.95).

This is in stark contrast to the attitude of the Finer Report which accepted that in a democratic society it was impossible to limit reproduction to those that could afford it.

In the 1990s what may be termed a 'masculinist backlash' emerged, which was often in alliance with the New Right, but was not synonymous with it. The main theme of this is that men have been alienated from society because women and/or the state have stripped them of their function within it. The assumption is that men are instinctively uncivilised, and that family responsibility is the only thing which ties them into communal living. Many analysts of social trends have noted a growing decomplementarity between men and women.18 Burns and Scott (1994) have coined the term 'decomplementary theory',

18 For a review of some of this literature see Burns and Scott (1994).
and point out that it has been embraced by writers across the political spectrum. The basic premise of this theory of behaviour is that men and/or women have adapted rationally to a changing economic climate affecting work and welfare, and have become more independent of each other. This is seen as a good or a bad thing by different writers. There are many weak points about this theory which it would be inappropriate to explore here, where the focus is on policy not behaviour. What is noteworthy however is that the fear of this decomplementarity has been a constant leitmotif of policies on the family. From the 1980s decomplementarity was seen as a reality, and this led to an overt policy response.

The arguments of two ethical socialists (Dennis and Erdos, 1993) have been taken up by members of the New Right. Dennis and Erdos claim that out of the separation of sex and marriage came the separation of childcare and marriage or partnership. Before the 1960s sex and marriage were (ideally at least) not separately negotiable, for the very reason that one partner had more to lose from the possibility of conception. Since then, the market mentality (with more exit and voice than loyalty) has taken hold.

Men were quite suddenly denuded of the internalised sense of a quasi-sacred duty to their sexual partner, to their children’s mother, and to their children. The onerous tasks connected with being the ‘father’ to a child, to an infant and eventually to a youth possibly as obstreperous as he knows himself to be, became avoidable. In these circumstances it was quite natural that fatherhood was increasingly evaded (op. cit: 65).
Dench (1994) echoes the arguments of Charles Murray (1984) in saying that family responsibilities are an indispensable civilising influence on men:

if women go too far in pressing for symmetry, and in trying to change the rules of the game, men will simply decide not to play...If women now choose to...withdraw the notion that men’s family role is important, then they are throwing away their best trick. Feminism, in dismantling patriarchy, is simply reviving the underlying greater natural freedom of men...Many women are now setting great store by the coming of New Man...The current attack on patriarchal conventions is surely promoting almost the exact opposite, namely a plague of feckless yobs, who leave all the real work to women and gravitate towards the margins of society where males naturally hang around unless culture gives them a reason to do otherwise. The family may be a myth, but it is a myth that works to make men tolerably useful (Dench, 1994: 16-17).

We must realise that it is not in the public interest to sponsor female independence where this deprives men of personal dependants... The knowledge that the wellbeing of particular people requires significant efforts and sacrifices from him is what a lad needs to transform him from a selfish beast into a caring and responsible member of the community - the frog into the prince (Dench, 1995).

This ideology embraces not only the importance of men to families, but also of families to men. The ‘movement’ seeks to turn the clock back to something approaching the 1950s in that they want the re-segregation of roles within the family. Breadwinning fatherhood is seen as vital to men’s identity as social beings.
British supporters of this view say less about women’s identity being best met in the home. But the mother earth figure has certainly been a feature of American New Right politics.

*Parental responsibility and the issue of cash - The 1991 Child Support Act*

The increase in female labour force participation, lone parent families and dependent elderly all meant that the family was under pressure. Economic recession and rising unemployment made reliance on the labour market as a solution to the family’s difficulties rather fragile, and government was determined to limit public expenditure on social security. ‘Bringing fathers back in’ was the only viable option. US, Australia and other European countries had already overhauled their maintenance systems along the lines of the Child Support Act in terms of the principle of getting fathers to contribute towards the costs of all their children (Maclean and Eekelaar, 1993).

The Act set up a government agency to administer the legislation. This works within the DSS, and will eventually take over from the courts all aspects of the assessment, collection and enforcement of child maintenance for children parents live apart. All ‘parents with care’ (PWCs) receiving benefit must apply for assessment. The system works to a formula. The ‘maintenance requirement’ is based on the cost of maintaining children, calculated from the allowances previously payable by the state. The ‘maintenance bill’ (what an individual father may be required to pay) is based on the idea of resource allocation. Beyond a father’s living costs (which exclude costs of a de facto family) 50% of his income is to be given to his first family up to the level of the maintenance requirement. Thereafter he pays
15-24% of his ‘assessable income’ depending on the number of children in his first family. One of the aims of the Act is to equalise the financial relationship between fathers and children in first and second families.

The Act utilises the notion that fathers had an obligation to support not only their children, but also their children’s mother. The 1990 Social Security Act had overturned a long-standing principle in social security law that ex-partners had no financial obligation towards each other (Maclean and Eekelaar, 1993). It did this “in recognition that it is the responsibility for the care of children which prevents the claimant working” (Department of Social Security, 1990: vol.2, para 1.3.2, Cm.1263, quoted ibid., p.213). So the principle of separating spousal- and child-maintenance that had been fought for over the 1984 Matrimonial and Family Proceedings Act was already overturned. This is partly due to the government’s own interest in keeping public expenditure down, though as Eekelaar and Maclean (1993) point out, the father’s obligation to his child’s mother persists even if she is supported by another man rather than the state, implying that the spousal obligation is not reducible to an obligation to the state.

The Act has some similarities to the Finer recommendations in that maintenance is processed by the government (albeit at arm’s length) and not the judiciary, and that this is done by way of a formula. But Finer protected second families. As Maclean and Eekelaar (1993) point out,

the emphasis has shifted decisively from enhancing welfare provision to improving collection mechanisms. But this is accompanied by measures designed to reduce the need to use these mechanisms
through the promotion of individual responsibility (p.225 op cit).

The Act was argued on the grounds of a moral responsibility of parents towards children. In fact "individual responsibility" has been defined in a certain way. It applies only to biological parents. The maintenance of a second partner or step-children, which many see as 'responsible' is discouraged.

The Child Support Act supports biological fatherhood and not social fatherhood. The Act is a significant departure from the traditional approach of British social security policy under which an absent father was to be permitted to support new de facto dependents before being compelled to compensate the State for its support of his first family. Now, if the father re-partners, the resources and needs of his new partner and any step-children are ignored in fixing his obligation...Above [the 'protected earnings level']...the policy is to move resources horizontally between households following the ties of blood (Maclean and Eekelaar, 1993: 218).

Reproductive Technology - The ultimate deconstruction of fatherhood

We have noted a concern in the 1980s about the growth in lone mother families, which separated fathers from children, and the growth in cohabitation of parents, which placed the father-child bond outside marriage. Another important issue was reproductive technology. Fertility treatment had become more widespread and more technological throughout the 1970s. The birth of the first 'test tube baby' in the mid-1970s stole the headlines. Then in 1985 came the birth of the first surrogate child
in Britain arranged through an agency. Reproductive technologies have the potential to fragment sex, genetic parenthood, bearing and rearing. It therefore forced an appraisal of what constitutes fatherhood (as well as motherhood) in our society.

Artificial insemination by donor (AID) first entered public debate in 1945 with an article in the British Medical Journal (Barton, Walker and Wiesner, 1945). This led to discussion in the press and parliament. Later that year the Archbishop of Canterbury set up a commission of inquiry (see Pfeffer, 1987, no reference given). It recommended that the practice be criminalised. This was largely due to the threat that it posed to marriage and the assumption of paternity. In 1959 the Feversham Committee was set up following debate over the court case of *MacLennan v. MacLennan, 1958* (see Pfeffer, 1987, no reference given). This divorce case turned on whether a wife using AID without her husband’s consent had committed adultery. If the child had been considered the product of an adulterous act then it would, at that time, have been illegitimate. As Lord Brabazon of Tara said, “When we come down to brass tacks, the whole thing revolves on whether the child should be a bastard or not.”19 The Feversham Committee on Artificial Insemination published its report in 1960 (Feversham Committee, 1960) and was critical of AID on moral grounds, but upheld the right of consenting adults to practice it. One of the reasons for their reluctance was the threat to paternity that would ensue (Pfeffer, 1987). The Committee duly

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suggested that AID children should remain illegitimate, so as not to undermine the assumption of paternity.

In 1970, following an increased number of requests for information on AID the British Medical Association set up an inquiry which reported in 1973 (Peel, Sir John, 1973), and this was (presumably for reasons of professional interest) more favourable. It recommended the setting up of AID clinics within the NHS. By the 70s the fear of AID as a threat to marriage had begun to recede in favour of seeing it as a way of enhancing marriage for the childless. As Smart (1987) says,

It was childlessness that was becoming the 'problem'.
Childlessness was in fact the very antithesis of the nuclear family ideal (p.107).

From the 1970s the increase in numbers of step-parents caring for their children had weakened the reliance on blood ties. Also, because the AID child was wanted by both parties it didn’t pose a threat to the stability of the family. In cases where the child was not wanted by the father it was later deemed in law to remain illegitimate.

Smart (1987) suggests that the family pattern given most support by government policy is the one most likely to support a nuclear family. The 1979 Law Commission Report on Illegitimacy had recommended the tying-in of AID children to their social parents, severing the biological link with legitimacy. The social parents more closely mirrored the family ideal than did a link with an ‘outside’ donor. The Commission recommended that an AID child should be legitimate because the relationship with the donor was not adulterous, he was unidentified, and because the husband had consented. Like the Warnock Report (1984) it assumed AID would only be used in
stable married unions - not for single people or homosexual couples. In other words, in the one same paper the Law Commission promoted fatherhood on either biological and social lines for different children. Biological links were supported by the promotion of automatic parental responsibility, and social links were supported by the recommendations on AID. The Warnock Report also recommended that the husband of the mother should be the legal father of an AID child. Another example of the promotion of traditional family types is the Warnock recommendation (later s.28(6)(b)) that legitimacy should not be conferred on a child born of IVF or AIH if the father is dead at the in utero stage. Another is the recommendation that treatment be restricted to couples. Giving AID or AIP (artificial insemination by partner) children of unmarried parents a legal link with their fathers, strengthens the idea of nuclear units and father-bonds despite lack of marriage. The Warnock Committee also wanted to ban surrogacy in part because this undermined the idea that a man is father to his wife’s children, both with regards to the commissioning father and the husband of the surrogate mother. Also, as Birke et al. (1990) note:

[The Feversham] committee saw AID as an abomination because it showed that men were willing to bring up children of whom they were not the natural fathers. Warnock rejects surrogacy because it shows that women are willing to part with their natural children. Although in both cases, it was the shift from a natural to a social relation that was disturbing, it is interesting that in the case of surrogacy the emphasis is on the unnaturalness of the woman who chooses not to bring up her child, while in the case of AID it is the man who chooses to raise another man’s child who is seen as unnatural (p.265).
Legislation on legitimacy and adoption also seems to support the nuclear family argument.

Conclusion

What can we conclude from this review of the changes in fatherhood? I return to the four themes noted at the beginning of the paper.

The first theme was the issue that arises time and time again, of whether fatherhood should be defined biologically or socially. Different things have been expected of married and unmarried fathers, and these have changed over time. Also, fatherhood has been defined along biological or social lines according to context. The traditional assumption of paternity, which fuses biological and social fatherhood, has been increasingly difficult to maintain as circumstances such as divorce, second families, and reproductive technology have forced a separation of the two. In trying to achieve the aim of tying fathers to children policy makers have varied on which fathers have been dealt with.

Statute law setting down parameters for private maintenance has generally favoured biological links, but allows the courts freedom to choose the most pragmatic re-ordering in accordance with the welfare of the child. For instance, a social father's obligations to a "child of the family" can be enforced. Certainly public maintenance before the 1991 Child Support Act was based on the assumption that fathers were more likely to pay for second families, even when no biological link existed. As the daily expression of family life for an increasing number of people is not based biologically, the new system of child maintenance embodied in the Child Support Act (which re-forges links on
biological lines and consequently breaks links based on social lines) may prove inoperable.

In the area of identity as a component of child welfare the biological link has been supported most successfully in the field of adoption. But while paternal origins are more frequently recorded than in the past, actual contact between a father and his child is still at the discretion of the courts and welfare workers. It appears, and the 1975 Children Act in its provisions on step-parent adoption is an example, that greater weight has traditionally been given to cementing new families where biological parents had not been married. Conversely, in the area of AID where the principles on identity and biology might have been upheld, the biological father has been shrouded in secrecy.

The second claim was that child welfare developed further as a central issue in the relationship between parents, children and the state. Ideas on what constitutes child welfare have changed over time. From a time when a father was seen as making little contribution to his child’s welfare other than as a provider, fathers have been seen as increasingly important in the socialisation of children. The discipline of child psychology has carved out a place for fathers in the formation of a child’s identity. This is particularly relevant to social policies on fathers who are absent for a variety of reasons. Legitimacy laws (the Legitimacy Act of 1959 which allowed the legitimation of children of adultery, and the 1987 Family Law Reform Act abolishing the status of illegitimacy) put the notion of equity for children first, and in doing so managed seriously to challenge the assumption of paternity, the traditional foundation of married fathers’ rights over children. Arguments for equity between children had
traditionally been resisted on the grounds of maintaining a
distinction between marriage and non-marriage.

Mothers and fathers have been forced to justify claims to a
legal relationship with children on the shifting grounds of the
interpretation of child welfare. Smart (1987) has argued that the
child welfare principle arose as a reaction to demands for
mothers' rights:

The fact of mothering children has never involved a
question of rights except...in relation to the punitive
consequences of illegitimacy. Once mothers began to
demand certain rights from the law, the parameters of
debate changed; the law became interested only in the
welfare of children and asserted that parental rights
were an inadequate concept when dealing with minors
(p.115).

But the fact is that unmarried mothers have fought for and
gained substantive rights as a result of the interpretation of child
welfare. The terms have shifted from 'rights over children' to
'responsibility for children', but the original position in law for
unmarried mothers is that they have (the right to) automatic
parental responsibility, while fathers have to take recourse to the
mothers wishes or ultimately to the courts. While married fathers
have made headway in gaining legal status with regard to their
children, married mothers are still in a stronger position in
private law.

The third claim was that the cash provider role has been
given greater priority for fathers than the care provider role,
though enforcement has been weak. Throughout the period
studied the cash provider role has maintained its ideological
importance. But the growth in child psychology has increased the
importance placed on the father as carer. This also appears to
have been used by government in the hope of providing incentives for cash provision. The growth in numbers of second families has severely limited enforcement of child maintenance. Past assumptions about the state’s duty to maintain, as well as practical arguments for the state’s support of first families, have been rejected by the New Right. Supporters of the New Right argue for stronger enforcement on biological lines on the grounds of equity to children, fairness to the taxpayer, and the promotion of individual responsibility. So far it appears that the position taken in the Child Support Act will fall foul of practical considerations that have arisen throughout the post-war period.

The government faces a real problem. For part of the New Right argument is based on the child’s need - the need for two parents. The solution therefore would be to provide disincentives to lone parenthood. But disincentive policies have been limited in this country by the fear of consequent harm to children. Need is also linked to targeting, which is part of the New Right dogma. Indeed it is because of the needs argument that, for instance, social security legislation has, until the 1995 Budget, given favourable treatment (as distinct from favourable outcome) to lone parents, even under New Right governments. It therefore seems that harsh moves to deter lone parenting have been considered to be (and may well be) both operationally and politically impracticable.

The fourth issue is the public/private law dichotomy. In custody decisions the judiciary have proved more traditionally minded than the makers of statute. While public law has given unmarried and de-married fathers stronger links with their children, the courts have continued to favour a male-breadwinner role for fathers and a caring role for mothers.
In the areas of maintenance and custody (cash and care), public and private law often pull in opposite directions. On the principle of maintenance, statute has taken a strong line, which is often not enforced by courts on pragmatic grounds. The government take-over of the courts' role in maintenance assessment may provide a solution presented by the operation of two separate systems. Alternatively, a formulaic basis for maintenance decisions may prove politically dangerous. Additionally, child welfare may be popularly re-defined in a way, which demands the re-introduction of a discretionary system.
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