

How Redefining Marriage Redefines Parenthood

By Elizabeth Marquardt

Talk given at The Iona Institute, Dublin, January 30, 2008

Do fathers matter? Do mothers matter?

Worldwide trends in law and reproductive technologies are redefining parenthood in ways that increasingly put the interests of adults before the needs of children.

Around the world, the two-person, mother-father model of marriage and parenthood is being challenged. The growing emphasis is on meeting adults' rights *to* children rather than children's needs to know and be raised, whenever possible, by their mother and father.

Trends driving this revolution in parenthood include high rates of divorce and single-parent childbearing, the growing use of egg and sperm donors, support for same-sex marriage, and increasing interest in group marriage arrangements. These changes are proceeding at breakneck speed as reproductive technologies advance, as science continues pushing the boundaries on baby-making, and as new constituencies are more openly raising children and advocating for legal and public recognition. Quite often the state is actively supporting and at times leading the way in the revolution in parenthood.

In law and culture, the new idea is that children are fine with any one or more adults being called their parents so long as the appointed parents are nice people. But how do children feel about the brave new world of parenthood? Do fathers and mothers matter to children? Does how they feel matter?

Among the changes that are redefining the two-parent, mother-father model of parenthood are:

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.” With that little-noticed change the focus of the law dramatically shifted from the mother and father who make the baby to the adults the state decides are a child’s appropriate parents.

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.”

A similar proposal was made in Massachusetts after the legalization of same-sex marriage. The public health department there proposed amending birth certificates for all children in the state to read “parent A” and “parent B” rather than “mother” and “father.”

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.

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. 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.

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. 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.

In Vietnam, the state run 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.”

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. 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.

Meanwhile, in the United States the field of reproductive technology continues in an almost entirely unregulated environment. 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 a child.

In 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 asserted her parental rights as well.

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. The outcome has potentially far-reaching implications not just for same-sex couples but for the many heterosexual couples in stepfamilies, as well as those who might use reproductive technologies or temporarily raise children together without marriage, adoption, or other legal arrangements.

In fact, today same-sex couples, adoptive parents, and singles and infertile couples using donors now routinely petition to have one or both biological parents left off the birth certificate -- and even to have non-biological parent figures 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. A similar ruling was recently made in Ontario. 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. The state of California allows a "second mother" to be entered on the birth certificate as the child's father. 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." A similar suit was just filed in Oregon. More are likely.

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.

The common thread running through many of these decisions is the adult right to a child. These claims are important. The desire for a child is a powerful force felt deep in the

soul. This desire 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.” 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. Adoption is a pro-child social institution that finds parents for children who desperately need them. It is a highly admirable expression of altruistic love, a kind of love that transcends our hard-wired 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. But the actions and testimony of children and adults, as well as a great deal of social science evidence, powerfully suggest that biology does matter.

The Child's Point of View

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. 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, being quoted in news articles, and using the Internet to try to contact their sperm donors and find half-siblings conceived with the same sperm. 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.

While the numbers arguably are small, they are growing, and the stories these young people tell raise questions not only about their own experience but about the prospects for the next generation of children.

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.” At least one uses the term “kinship slave.” Some born of lesbian or gay parents call themselves “queer spawn,” although others in the same situation find the term offensive. No studies have been done on these young people’s long-term emotional experience. Clearly, rigorous long-term studies need to be done. For now, we should listen to their compelling voices.

In interviews, donor conceived young adults often say something like this: My sperm donor is “half of who I am.” One young woman says she wants to meet her donor because she wants to know “what half of me is, what half of me comes from.” Another says, “I want to meet the donor because I want to know the other half of where I’m from.” Another is seeking information because, she says, “I feel my right to know who I am and where I come from has been taken away from me.”

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 explained. By contrast, her mother, interviewed for the same story, observed, “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.”

Just recently 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, and that he 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.”

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.

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 stepfamilies look more like children of single parents than children raised by their own, married mother and father.

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.

Moreover, the existing research on same-sex parenting is small and limited because same-sex couples raising children comprise a very small part of the overall population and are only recently becoming more visible. And a big problem with the current literature is that most of it compares single lesbian mothers to single heterosexual mothers – in other words, children in one kind of fatherless family with children in another kind of fatherless family.

We have far 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 (with adoption as a critical, pro-child back up plan) and the importance of recognizing the absence of their mother or father as a serious loss for a child.

The Revolution in Parenthood – What’s Next?

Increasing Slippage in Meaning of Fatherhood and Motherhood/psychological parenthood

The revolution of parenthood is contributing to further deep uncertainties in the meanings of fatherhood and motherhood.

By far the most striking and potentially far-reaching development – one 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. 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 or a parent's live-in partner.

**

Hard sciences:

The meaning of motherhood and fatherhood is encountering further challenges in the hard sciences. Right now, scientific research around the world with the DNA in eggs and sperm that is raising the possibility that children could be born from one genetic parent, two same-sex parents, or three parents. Headlines recently announced research at leading universities in Britain and New Zealand that could enable same-sex couples or single people to procreate. British scientists have been granted permission to create a human embryo with three genetic parents, and last year, a team in Scotland tricked an egg into dividing and created a embryo without a genetic father. Japanese scientists have already created a mouse with two genetic mothers and no father.

Meanwhile, the stem cell research field is growing ever closer to the fertility industry, as scientists strike bargains with doctors to secure eggs needed for therapeutic cloning from women undergoing fertility treatments, and as cloning techniques are perfected with the likelihood that they will one day, sooner or later, be used to produce babies. James Watson, of Watson and Crick fame, and Robert Edwards, the father of IVF treatment, last

year both called at a public conference for reproductive cloning to be made available to couples who have exhausted all other options. In the hard sciences too, the two-person, mother-father model of parenthood is facing serious challenges.

**

New developments in the marriage debate are also posing new challenges:

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. These efforts are emerging from at least two surprising directions.

Polyamory – 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.

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. For these folks, if two parents are good for children, then three or more “parents,” spread among one or more households and sharing a sexual relationship with one another, is even better.

The topic of polyamory is emerging at the cutting edge of family law and advocacy, and among religious organizations the Unitarian Universalists for Polyamorous Awareness hope to make theirs the first to recognize and bless polyamorous relationships.

Polygamy – Polygamy, of course, is much better known and is currently criminalized in the United States and much of the west. This might change. The new polygamy series on HBO, “Big Love,” spawned surprisingly positive coverage of polygamy this spring, including sympathetic television interviews with polygamous families, a spate of news stories, including the opinion of polygamy activists that theirs is the next civil rights battle, and even a New York Times columnist who argued, “If polygamy is the strongest argument against same-sex marriage, then let the wedding bells ring.” And in a development that shocked many Canadians, two government studies released last winter by their Justice Department recommended the decriminalization of polygamy. In the US and Canada a number of legal scholars are arguing, as one columnist summarized, that “the abuses of polygamy flourish amidst the isolation, stigma, and secrecy spawned by criminalization.” Polygamy per se is not a problem, only “bad” polygamy.

Conclusion

So, what do we do now?

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, with regard to reproductive technology, 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 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. Couples in that nation who wish to conceive now 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 (and sometimes impoverished) 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.

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 facts are this: 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,” 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 dramatically impact the future for children.

Do mothers and fathers matter to children? Is there anything special – anything worth supporting – about the two-person, mother-father model? These are the questions on the table. Let’s not experiment on a new generation of children and wait for the results to come in twenty years down the road. The time to take on these questions is now.