

GAY FATHERS: DISRUPTING SEX STEREOTYPING AND CHALLENGING THE FATHER-PROMOTION CRUSADE

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This Article addresses the problematic perpetuation of sex-stereotyped parenting roles by courts, commentators, and politicians to whom this Article will refer as the “father-promotion crusaders.”¹ These crusaders assert that “children

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¹ This Article uses this term to suggest a “moral crusade” along the lines of that described by Ronald Weitzer in *The Social Construction of Sex Trafficking: Ideology and Institutionalization of a Moral Crusade*, 35 POL. & SOC’Y 447 (2007). According to Weitzer, moral crusades are movements fueled by “claims-making by interested parties” about particular social conditions or arrangements. Regardless of whether the claims truly reflect actual social conditions, crusade claims transform social conditions into “problems.” Moral crusaders “define a particular condition as an unqualified evil, and see their mission as a righteous enterprise whose goals are both symbolic (attempting to redraw or bolster normative boundaries and moral standards) and instrumental (providing relief to victims, punishing evildoers).” *Id.* at 448. Crusade claims become institutionalized when crusaders are consulted in policy making, crusade ideology is given official recognition and endorsement, officials independently articulate the ideology, and programmatic or legal changes are made in accordance with the ideology. *Id.* at 458.

need a father” and proceed to support this claim by defining “father” in various ways, all of which rely upon sex stereotypes. The promotion of sex stereotyping in the realm of parenting stands in contrast to an anti-sex-stereotyping norm that has begun to take hold in the realm of employment since 1989, the year in which the Supreme Court recognized sex stereotyping in the workplace as a form of sex discrimination in *Price Waterhouse v. Hopkins*.² In that case, the Supreme Court acknowledged that “an employer who acts on the basis of a belief that a woman cannot be aggressive, or that she must not be, has acted on the basis of gender.”³ The Court held that a female employee who failed to receive a promotion to partnership in her accounting firm because she did not conform to female sex stereotypes could bring a sex discrimination claim under Title VII. A plurality of the Court explained that sex stereotyping in the workplace is of legal relevance because:

[W]e are beyond the day when an employer could evaluate employees by assuming or insisting that they matched the stereotype associated with their group, for in forbidding employers to discriminate against individuals because of their sex, Congress intended to strike at the entire spectrum of disparate treatment of men and women resulting from sex stereotypes.⁴

Following *Price Waterhouse*, other courts have acknowledged that sex discrimination in the form of sex stereotyping is also actionable where male employees face

² *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989).

³ *Id.* at 250.

⁴ *Id.* at 251 (quoting L.A. Dep’t of Water & Power v. Manhart, 435 U.S. 702, 707 n.13 (1978)). As Elizabeth Scott has explained, sex stereotypes can harm women workers by resulting in discrimination against women “because they fail to exhibit feminine gender traits” (e.g. denying a female employee a promotion because she is assertive) or “because . . . they do exhibit stereotypical gender traits that are [believed to] not [be] desirable” (e.g. assuming women lack interest in certain competitive jobs because they prefer a more supportive environment). Elizabeth S. Scott, *Pluralism, Parental Preference, and Child Custody*, 80 CALIF. L. REV. 615, 664 n.161 (1992).

discrimination in the workplace because they fail to conform to male sex stereotypes. For example, the First Circuit, citing *Price Waterhouse*, has stated that:

[J]ust as a woman can ground an action on a claim that men discriminated against her because she did not meet stereotyped expectations of femininity . . . a man can ground a claim on evidence that other men discriminated against him because he did not meet stereotyped expectations of masculinity.⁵

In response to these cases, employers have begun to educate managers, supervisors, and employees to raise awareness of sex stereotyping in the workplace and the threat of legal liability for those who engage in it. For example, one guidebook for employers suggests using "in-house seminars and role playing sessions" to emphasize the "consequences of wrongful stereotyping" by explaining how "phrases such as 'she is too macho' or 'he acts too femininely' on an interview evaluation can lead to claims of sexual stereotyping and potential liability."⁶

However, despite the Court's admonition in *Price Waterhouse* that employers cannot insist that their employees conform to sex stereotypes and some employers' efforts to eradicate such stereotyping from their workplaces, other cases limit the reach of *Price Waterhouse*. These cases hold that sex-differentiated personal appearance standards in the employment context do not *per se* violate Title VII. The courts in these cases have found that employers may be able to justify discriminatory appearance standards as "bona fide occupational qualifications" and that characteristics such as hair length, makeup, and facial

⁵ Higgins v. New Balance Athletic Shoe, Inc., 194 F.3d 252, 261 n.4 (1st Cir. 1999); see also Nichols v. Azteca Rest. Enters., 256 F.3d 864, 874 (9th Cir. 2001) (holding that a male employee who was sexually harassed because he acted "too feminine" and therefore did not conform to a male sex stereotype could bring a sex discrimination claim under Title VII).

⁶ Eileen P. Kelley, Amy Oakes Young, & Lawrence S. Clark, *Sex Stereotyping in the Workplace: A Manager's Guide*, 36 BUS. HORIZONS 23, 27 (1993).

hair are undeserving of protection because they are not “immutable.” These courts have allowed employers to enforce conformity to sex stereotypes by dictating different grooming standards for male and female employees.⁷

For example, in *Jespersen v. Harrah's Operating Co.*, the Ninth Circuit rejected a Title VII claim raised by a female bartender who was fired for failing to conform to her employer's personal appearance standard requiring women to wear makeup.⁸ The court distinguished the case from *Price Waterhouse* by arguing that the stereotyping at issue in *Price Waterhouse* singled out an individual employee and unfairly expected her to hide traits that, if displayed by men, would have been considered praiseworthy.⁹ By contrast, the court found that the personal appearance standards at issue in *Jespersen* required all employees to wear the same “for the most part unisex” uniforms and there was no evidence that “the policy was adopted to make women bartenders conform to a commonly-accepted stereotypical image of what women should wear” or that the grooming standard would interfere with “a woman's ability to do the job.”¹⁰ In denying Jespersen's claim, the court expressed concern that to find otherwise would “come perilously close to holding that every grooming, apparel, or appearance requirement that an individual finds personally offensive, or in conflict with his or her own self-image, can create a triable issue of sex discrimination.”¹¹ Although the court left open the possibility that a plaintiff could challenge a grooming requirement under

⁷ See Brian P. McCarthy, *Trans Employees and Personal Appearance Standards Under Title VII*, 50 ARIZ. L. REV. 939, 957–59 (2008) (noting cases in which employers were given authority to set personal appearance standards that are justifiable under the bona fide occupational qualification (BFOQ) provision and which regulate only “mutable” characteristics as long as the personal appearance standards do not impose undue burdens on members of one sex or expose employees to humiliation or harassment).

⁸ *Jespersen v. Harrah's Operating Co.*, 444 F.3d 1104, 1111 (9th Cir. 2006).

⁹ *Id.* at 1111.

¹⁰ *Id.* at 1112.

¹¹ *Id.* at 1112.

Price Waterhouse “[i]f [the] grooming standard imposed on either sex amount[ed] to impermissible stereotyping,” the court argued that “Jespersen’s objection to the makeup requirement, without more, c[ould not] give rise to a claim of sex stereotyping under Title VII.”¹²

Yet, as critics of *Jespersen* have pointed out, it is not difficult to identify sex stereotyping in the Harrah’s policy. Even the dissenting judges “insinuated . . . the majority’s rejection of Jespersen’s sex stereotyping argument was . . . rooted . . . in the sexism and classism of a male-dominated court.”¹³ As Judge Kozinski noted, if male judges unused to wearing makeup were suddenly required to “wear face powder, blush, mascara and lipstick while on the bench,” they would likely find it a “highly intrusive,” “burdensome and demeaning” requirement that “would interfere with [their] job performance.”¹⁴ Because such a reaction would be seen as reasonable from men, it should also be seen as reasonable from women who “choose to present themselves to the world without makeup” and therefore do not “conform to Harrah’s [sex-stereotyped] notion of what a ‘real woman’ looks like.”¹⁵

Despite the limitations that *Jespersen* and other cases have placed on the anti-sex-stereotyping norm announced in *Price Waterhouse*,¹⁶ this norm still has had a far greater impact in the realm of employment than in the realm of the home. Both before and after the *Price Waterhouse* decision, numerous courts, political figures, and other commentators have condoned and encouraged conformity to sex stereotypes in the family sphere. In particular, these commentators have perpetuated sex stereotypes that dictate differentiated parenting roles for women and men. The perpetuation of these sex stereotypes often takes

¹² *Id.* at 1112.

¹³ McCarthy, *supra* note 7, at 962.

¹⁴ *Jespersen*, 444 F.3d at 1118 (Kozinski, J., dissenting).

¹⁵ *Id.*

¹⁶ See McCarthy, *supra* note 7.

the form of a crusade¹⁷ in support of the proposition that “children need a father.” Father-promotion crusaders justify this proposition by alleging that sons and daughters have needs that are uniquely met by having a father and that there are significant harms that result from father absence. Deconstructing this proposition by critically examining the ways in which the term “father” is being defined and the reasons given for why children need fathers exposes the sex stereotypes that underlie it. Indeed, an analysis of the language used by these courts, politicians, and commentators reveals that they are defining “father” and the needs a father fulfills in various ways that ultimately rest on sex-stereotyped assumptions about how men do and ought to behave as parents and the alleged benefits that accrue to children when men fulfill certain sex-stereotyped parenting roles.

¹⁷ In the father-promotion context, the two evils the crusaders seek to overcome are (1) father absence, whether literally in the sense that the father has physically abandoned his child or figuratively in that the father is present but has failed to meet the moral and normative expectations defining a father’s role and responsibilities, and (2) the notion that fathers are not necessary. The victims of the first evil are fatherless children while the victims of the second evil are fathers themselves. Children who lack fathers are said to be at greater risk of dropping out of school, living in poverty, becoming pregnant, using drugs, and committing crimes. See, e.g., *The Father Factor: Data on the Consequences of Father Absence*, NAT’L FATHERHOOD INITIATIVE, <http://www.fatherhood.org/Page.aspx?pid=403> (last visited Oct. 5, 2011). Deeming fathers “unnecessary” makes fathers “victims of . . . a revenge manifesto perpetuated through the demonization of deadbeat dads, the limits on male custody and abortion rights, [and] the rise in artificial insemination.” See KATHLEEN PARKER, *SAVE THE MALES: WHY MEN MATTER, WHY WOMEN SHOULD CARE* 37 (2008).

The father-promotion crusaders’ ideology has been institutionalized via recognition and endorsement by the United States government which now sponsors a National Responsible Fatherhood Clearinghouse website that promotes fatherhood as a means of increasing children’s likelihood of “do[ing] well in school, hav[ing] healthy self-esteem,” and “avoid[ing] high risk behaviors including drug use, truancy, and criminal activity.” See *infra* note 70. Moreover, as detailed in Part I of this Article, President Obama has launched a new program called the “Fatherhood and Mentoring Initiative” in accordance with the father-promotion ideology. See *infra* note 58 and accompanying text.

In an effort to disrupt sex stereotyping in the realm of parenting,¹⁸ it may be useful to examine recent research on gay fathers that provides examples of men who do not conform to sex-stereotyped definitions of "father" and therefore challenge the assumptions on which the aforementioned courts and commentators base their argument that children need a father. Sociological and psychological studies finding that gay men tend to parent in ways that more closely resemble traditional mothering run the risk of reifying maternal stereotypes. However, they also have the potential to underscore the male sex stereotypes embedded in commentary describing how children's needs are uniquely met by fathers because fathers are male, masculine, complementary to, supplemental to, and/or different from female parents, and fulfill particular gender roles traditionally attributed to fathers. Moreover, these studies provide some initial evidence from which one can argue that "fathers," as traditionally defined, are not essential in ensuring that children experience positive developmental outcomes because the children of gay fathers have not been disadvantaged in their psychosocial growth as compared to children raised by heterosexual parents, despite evidence suggesting that the gay fathers have failed to conform to the father-promotion crusaders' sex-stereotyped definitions of "father." That good parenting does not require a father as framed by the father-promotion crusaders does not necessarily mean that children need only a mother, but it does suggest that children would not suffer if role-based parenting were dissolved.

¹⁸ It should be noted that, as in the realm of the workplace, sex stereotyping in the realm of parenting can also be detrimental to both men and women. The systematic assignment of "primary domestic responsibilities to women and financial support obligations to men" is based on the invalid sex-stereotyped assumption "that men and women have different characteristics and competencies that make differentiated gender roles efficient." See Scott, *supra* note 4, at 664. These sex stereotypes operate to "exclu[de women] from the power and resources of society" and undermine men's "confidenc[e] about their nurturing capacities." *Id.* at 666-67. Sex-stereotyped parenting roles are also problematic because they transmit these stereotypical beliefs, thereby perpetuating the harms that result from them, to daughters who learn from observing their mothers that "self-fulfillment is found first through marriage and motherhood" and to sons who learn from their fathers that "self-fulfillment is . . . equated with success in the broader world beyond the family." *Id.* at 663.

Part I of this Article discusses several examples of court opinions and other texts and media in which the authors insist that "children need a father" with the aim of developing a deeper understanding of exactly what this statement means. Upon examining the proffered justifications for this statement, this Article argues that in saying "children need a father," these authors mean children need: (1) a male parent, (2) a masculine parent, (3) a parent who performs a role traditionally associated with fathers, and/or (4) a parent who is complementary or supplemental to and/or different from a mother. This Article explains how these four formulations presuppose that parenting behaviors are differentiated based on sex, rely on sex-stereotyped understandings of what it means to be a father, and reinforce compulsory heterosexuality.

Having parsed the term "father" as used by these authors into these four separate definitions, Part II then explores whether gay fathers fit these various definitions and could therefore, at least in theory, fulfill the needs served by having a male parent, a masculine parent, a parent who performs a traditional father role, and/or a parent who is complementary or supplemental to and/or different from a mother. While it is unlikely that the courts, politicians, and commentators discussed in Part I were envisioning a gay parent when insisting that children need a father and identifying the benefits of having one, this Article argues that gay fathers can in theory fulfill the needs served by having a parent who meets each of the four definitions of "father." To test whether this theory may be true in practice, this Article surveys sociological studies of gay fathers which suggest, partially to the contrary of this theory, that for the most part gay fathers do *not* fulfill two of the four definitions of "father" in that they do not behave like masculine parents or parents who perform a traditional father role. Indeed, several sociologists have conducted studies finding that gay fathers adopt parenting practices more "feminine" than typical heterosexual fathers and perform functions traditionally associated with a mothering role. While recognizing that scholars of gay fatherhood may be perpetuating the stereotypes surrounding maternity in drawing such conclusions, this Article argues nonetheless that these scholars make a positive contribution in highlighting the ways in which gay fathers disrupt the father-promotion crusaders' sex-stereotyped

understanding of what it means to be a “father” and the expectation that parenting tasks and behaviors are or should be divided based on sex.

Given the evidence that gay fathers disrupt sex-stereotyped definitions of “father” by engaging in parenting behaviors and tasks traditionally associated with mothers, Part III asks whether the research on gay fatherhood, although incomplete, could lend support for the notion that children can have positive developmental outcomes even when they do not have a masculine parent, a parent who fulfills the traditional “father” role, and/or a parent who is complementary to or different from a mother. Finding a consensus among psychologists that children raised by gay parents are as likely as children raised by heterosexual parents to be supported in their psychosocial development and that children of gay parents are not disadvantaged in any significant way relative to children of heterosexual parents, this Article argues that gay fathers present a serious challenge to the father-promotion crusaders’ fundamental premise that “children need a father.” Particularly when taken in conjunction with the research of legal scholars who have studied single-parent families headed by single mothers, the research on gay fathers suggests that having a “father” (as the term has been defined by the father-promotion crusaders) is *not* in fact essential to ensure that children have healthy developmental outcomes. In addition, the research on single mothers and gay fathers exposes and challenges the commitment to patriarchy and heteromascularity that underlies the father-promotion crusaders’ assertion that “children need a father.”

I. Promoting the Sex-Stereotyped “Father”

Various courts, political figures, and commentators, writing at least as far back as 1960 and as recently as 2010, have adamantly insisted that “children need a father.” Regardless of whether this assertion is true, what exactly do they mean? Based on the language they use to bolster this claim, this Article argues that four definitions of “father” are at work in this statement, all of which rely to some degree on stereotyped notions of what fatherhood entails and what purposes men serve as parents.

A. Definition 1: Children need a “father,” in that they need a “male parent” in their lives.

One definition of “father,” as the term is used by father-promotion crusaders who assert that children need a father, is “a male parent.” At the forefront of these crusaders, David Popenoe wrote in 1996 that “fathers—*men*—bring an array of positive inputs to a child, unique and irreplaceable qualities that women do not ordinarily bring.”¹⁹ Even though men and women share some similarities and women can often do the same things that men can do, Popenoe asserts that “males and females are different to the core.” Citing differences between men and women in terms of the way they think, act, their levels of aggression, “general activity level, cognitive skills, sensory sensitivity, and sexual and reproductive behavior,” Popenoe concludes that “the expression of these differences is important for child development” and hence children need a male parent to exhibit the qualities that female parents lack.²⁰ Writing in 2008, Kathleen Parker, another father-promotion crusader, echoes Popenoe’s sentiments when she asserts that “[s]ome argue that mothers can do most things fathers do [But] men and women do things differently [A] mother can play catch in the backyard, but she’s still not a *guy* playing ball with his son.”²¹

According to the father-promotion crusaders, sons are especially in need of a male parent because a male parent can show them “how to be a man”—something a female parent cannot do. “Making the shift from boyhood to constructive manhood is one of life’s most difficult transitions, especially since boys as they grow up must break away from the comforting female arena of their mothers. They typically do so through identifying and bonding with their fathers.”²² Courts

¹⁹ DAVID POPENOE, *LIFE WITHOUT FATHER: COMPELLING NEW EVIDENCE THAT FATHERHOOD AND MARRIAGE ARE INDISPENSABLE FOR THE GOOD OF CHILDREN AND SOCIETY* 139 (1996) (emphasis added).

²⁰ *Id.* at 139–40.

²¹ PARKER, *supra* note 17, at 46 (emphasis added).

²² POPENOE, *supra* note 19, at 142.

also support this notion. For example, in affirming an award of custody of a son to his father in *Kennedy v. Carman*, the court noted with approval the observation that “a five year old boy . . . is verging on an age at which the guidance, direction, supervision, companionship and love of an understanding father will be most needed and beneficial.”²³ Or, as explained by Cynthia Mabry, who discusses the importance of accurate parentage determinations that allow children to identify their father,

When boys spend a majority of their time with women, they do not learn how to act like men. Although women are loving and nurturing parents who contribute much to the child’s development, women are not trained, and they do not have the experience, to teach boys how to become men. In short, boys need responsible, conscientious, and caring men, preferably their father, to guide them through life with a regular diet of father-love vitamins.²⁴

These commentators assert that it is also important for daughters to have a male parent because a male parent is best able to “teach [them] how to live among men.”²⁵ Parker suggests there is “a corollary between father-deprived daughters and an inability to relate well to males of the species.”²⁶ She also argues that the physical presence of a male parent in the household who is biologically related to the daughter can delay the onset of his daughter’s puberty, the benefit of which is to reduce her

²³ 471 S.W.2d 275, 289 (Mo. Ct. App. 1971) (internal quotations omitted).

²⁴ Cynthia R. Mabry, *Who Is the Baby’s Daddy (And Why Is It Important for the Child to Know?)* 34 U. BALT. L. REV. 211, 229–30 (2004) (internal quotations omitted).

²⁵ PARKER, *supra* note 17, at 44.

²⁶ *Id.*

likelihood of engaging in sexual activity at a premature age.²⁷ Moreover, the presence of a male parent can prevent “teenage girls’ early sexual activity” because such activity is often “related to a misplaced search for male attention and affection.”²⁸

Such descriptions of male parents and the benefits that supposedly result from having a male parent have come under intense criticism from other scholars whose research suggests that these descriptions are grounded not in empirical data but in sex-stereotyped assumptions about how males and females are “different to the core.” For example, Louise Silverstein and Carl Auerbach, characterizing Popenoe as a “neoconservative social scientist,” have criticized him for constructing an “essential father” based on assumptions that “the biologically different reproductive functions of men and women automatically construct essential differences in parenting behaviors” that result in differing benefits for children.²⁹ Psychologists who have considered “how and why average differences in personality, behavior, ability, or performance between the sexes might arise” have challenged theories that assume that sex differences “arise from preexisting ‘essential’ differences between male and female human organisms.”³⁰ To the contrary of such theories, these psychologists found that most:

²⁷ *Id.* at 44–45. Note also that the converse of this argument—that is, that girls who are exposed to biologically “unrelated males in their homes . . . are more likely to experience premature sexual development”—appears in CENTER FOR MARRIAGE AND FAMILIES AT THE INSTITUTE FOR AMERICAN VALUES, WHY MARRIAGE MATTERS: TWENTY-SIX CONCLUSIONS FROM THE SOCIAL SCIENCES 7 (2d ed. 2005), a report the United States Department of Health and Human Services Administration for Children & Families has cited in support of the Healthy Marriage Initiative’s goal of “increasing the percentage of children who are raised by two parents in a healthy [heterosexual] marriage.” *Healthy Marriage Initiative: General Information*, ADMIN. CHILDREN & FAMILIES, U.S. DEP’T OF HEALTH & HUMAN SERV., <http://www.acf.hhs.gov/healthymarriage/about/mission.html> (last visited Oct. 5, 2011).

²⁸ PARKER, *supra* note 17, at 44.

²⁹ Louise B. Silverstein & Carl Auerbach, *Deconstructing the Essential Father*, 55 AM. PSYCHOLOGIST 397 (1999).

³⁰ Abigail J. Stewart & Christa McDermott, *Gender in Psychology*, 55 ANN. REV. PSYCHOL. 519, 520 (2004).

[P]erceived and demonstrated sex differences on some characteristic or behavior occur with overlapping distributions, sometimes with highly gender-differentiated 'tails' of the distribution (e.g., some sex-linked developmental disorders, or extremely high scores in math ability, both of which are disproportionately found in boys). [But e]ven in these cases, and more markedly in cases with less differentiated tails on the distribution, there are simply average sex differences with wide and overlapping distributions.³¹

The only behavioral differences between males and females found to have nearly non-overlapping distributions were ejaculation, pregnancy, childbirth, and lactation.³²

As for the issue of a male parent's influence on his child's identity formation, there is some empirical evidence for the assertion that a child's relationship with his or her parent(s) is related to the child's identity status, but there is also conflicting evidence showing that the parent-child relationship is *not* related to identity status or that only the relationship with the child's mother is so related. Sex differences further complicate the findings, but at least two studies have concluded that "parental identification predicts identity status for females, but not for males."³³

Regardless of whether one can prove that boys do and/or need to identify with their male parent, the underlying stereotype at issue here is that fathers, defined as parents having male sex organs at birth, will develop a male identity and transmit that identity to their sons. As Paisley Currah explains, the concern behind the assertion that boys need a male parent (and that girls need a female parent) is the assumption that this will ensure that

³¹ *Id.*

³² *Id.*

³³ Phoebe Cramer, *Identification and Its Relation to Identity Development*, 69 J. PERSONALITY 670 (2001) (citations omitted).

they are raised “with a firm sense of the ‘correct’ gender identity—one that conforms to the gender assigned to them on the basis of their genitalia.”³⁴ It is this same concern and underlying assumption that appears in much of the rhetoric opposing the recognition of same-sex marriages. For example, Currah points to testimony cited by the minority members of the State of Hawaii’s Commission on Sexual Orientation and the Law in which it was asserted:

One of the most fundamental functions of parenting is to evoke, develop, and reinforce gender identity and then proceed to shepherd the developing child in such a way as to bring his psychological side into harmony with his biological side, and thereby develop a solid sense of maleness or femaleness.³⁵

Currah’s article suggests that part of the motivation behind insisting that boys need male parents (and girls need female parents) is the fear that a child who fails to develop the “correct” gender identity will later become gay or lesbian. Citing Shannon Minter, Currah explains that “gender identity problems in youth are invariably yoked to the specter of homosexuality, or ‘pre-homosexual conditions.’”³⁶ The concern about whether children will conform to the dictates of compulsory heterosexuality is evident even in Parker’s assertion that girls need a male parent. Notably, the reason why girls need a male parent is not to identify with him and develop the same gender identity, but to learn “how to live among men” and “relate well to males”; that is, to be comfortable in her difference from men and to develop a heterosexual identity. The father-promotion commentators do not seem to consider that daughters may come to identify with their male parent such that they develop a male gender identity in the way that these commentators expect sons will do.

³⁴ Paisley Currah, *Defending Genders: Sex and Gender Non-Conformity in the Civil Rights Strategies of Sexual Minorities*, 48 HASTINGS L.J. 1363, 1378 (1997).

³⁵ *Id.* at 1379 (citation omitted).

³⁶ *Id.*

B. Definition 2: Children need a “father,” in that they need a “masculine parent” in their lives.

Because the father-promotion crusaders assume that a person assigned the sex of male at birth on the basis of his genitalia will subsequently develop a masculine gender, they presume that a *male* parent will also be a *masculine* parent, thereby conflating the two. While these two characteristics—being male and being masculine—are potentially inclusive, they are not mutually inclusive. That is, it is possible to be a masculine parent without also being a male parent (and vice versa). As a result, it is possible to understand some of the father-promotion commentators’ arguments as signaling a need for a *masculine* parent but not necessarily for a *male* parent.

Whether a parent qualifies as a “masculine” parent may be judged based on: (1) the extent to which he (or she) has a “male gender-typed personality disposition or constellation of traits,” and (2) the extent to which he (or she) holds “attitudes and beliefs” that males *should* possess and display ideal “masculine” characteristics.³⁷ On the first measure, a highly masculine parent would report “that he is, for example, assertive”; on the second measure, a highly masculine parent would say “he thinks males *should* be assertive.”³⁸

³⁷ This Article adapts this idea from Joseph H. Pleck who suggests that these two kinds of measures can be used to determine the extent of one’s “masculinity orientation.” See JOSEPH H. PLECK, *Fatherhood and Masculinity, in THE ROLE OF THE FATHER IN CHILD DEVELOPMENT* 27, 30 (Michael E. Lamb ed., 5th ed., 2010). The “most widely used measures of gender-stereotyped personality traits” are the Bem Sex-Role Inventory and the Personal Attributes Questionnaire which “provide indexes of masculine and feminine traits.” The masculine index includes “instrumental traits” such as being “assertive” and “independent” while the feminine index includes “expressive traits” such as being “gentle” and “understanding of others.” See Jean M. Twenge, *Changes in Masculine and Feminine Traits Over Time: A Meta-Analysis*, 36 SEX ROLES 305, 306 (1997). Instrumental traits have also been defined to encompass “ambition and [the] need to dominate” while expressive traits encompass “sensitivity to the needs of others, altruism, warmth, and co-operativeness.” See Nikos Bozionelos & Giorgos Bozionelos, *Instrumental and Expressive Traits: Their Relationship and Their Association with Biological Sex*, 31 SOC. BEHAV. & PERSONALITY 423, 423 (2003).

³⁸ See PLECK, *supra* note 37, at 30.

The call for a masculine (but not necessarily male) parent is evident in the father-promotion crusaders' argument that sons need a father to ensure the "development of appropriately masculine character traits." According to Popenoe, such masculine traits to be obtained from this masculine parent include "male responsibility and achievement," being "suitably assertive and independent," and knowing "how to relate acceptably to the opposite sex."³⁹ Similarly, one state court has written that by the time boys reach their pre-teen years, "the impressionable age" at which they begin "to escape from the feminine influence of [their] mother[s]," they "require a father's guiding hand" to help them "attain . . . manhood."⁴⁰ Presumably what distinguishes the father's guiding hand from the mother's and makes it more effective in steering the child toward manhood is that the father's hand is masculine, not feminine. As Joseph Pleck explains, the father-promotion crusaders believe that fathers make a contribution that is "*uniquely masculine*; that is, fathers' contribution is unique specifically *because* fathers . . . have masculine characteristics."⁴¹ As a result, they argue that fathers have an "essential role to play in child development, especially for boys" who will and should develop their own masculine characteristics modeled after those of their father.⁴²

According to father-promotion crusaders such as David Blankenhorn, a lack of traditional masculinity is detrimental not only to sons but also to men, who should not have to "define [their] masculinity by either disavowing it or inverting it."⁴³ In so arguing, Blankenhorn rejects the ideal of the "New Father," which he characterizes as "constitut[ing] an androgynous rejection of all traditional masculinity."⁴⁴ Elizabeth Pleck

³⁹ POPENOE, *supra* note 19, at 142.

⁴⁰ *Urzua v. Urzua*, 355 P.2d 123, 124 (N.M. 1960).

⁴¹ PLECK, *supra* note 37, at 34.

⁴² *Id.* (internal quotations omitted).

⁴³ DAVID BLANKENHORN, *FATHERLESS AMERICA: CONFRONTING OUR MOST URGENT SOCIAL PROBLEM* 225 (1996).

⁴⁴ *Id.* at 224.

explains that the ideal of the "New Father" to which Blankenhorn refers arose in the 1970s as feminists began to insist that "fathers participate equally in child rearing as part of an egalitarian relationship between husbands and wives."⁴⁵ Equal participation meant that the New Father should be actively involved in his child's life, equally responsible for the "physical care of the child," and should "even [be] a labor coach and attendant at childbirth."⁴⁶ The New Father was expected to understand that "fathering was work, not simply play."⁴⁷ By the mid-1980s, social scientists had begun to measure the New Father's involvement with his children according to his levels of "engagement, accessibility, and responsibility" and "expected that fathers should be held to a high standard in all three."⁴⁸ Although Blankenhorn laments the rise of the New Father because he believes it signals the demise of "traditional masculinity," the New Father as described by Elizabeth Pleck envisions fathers redefining their parenting roles and expanding their parental obligations. From this, it appears that Blankenhorn has conflated masculinity with the performance of stereotypical male gender roles. In Blankenhorn's view, to be masculine, a parent must also perform the traditional functions associated with the role of a father.

C. Definition 3: Children need a "father," in that they need a parent who fulfills the role traditionally understood as "father."

And indeed, Blankenhorn also laments the "collapse of fatherhood as a social role for men"⁴⁹ and the "erosion . . . of the last two remaining anchors of the traditional fatherhood script," namely the two "paternal tasks" of being "head of the family and

⁴⁵ ELIZABETH H. PLECK, *Two Dimensions of Fatherhood: A History of the Good Dad-Bad Dad Complex*, in *THE ROLE OF THE FATHER IN CHILD DEVELOPMENT* 42 (Michael E. Lamb ed., 4th ed., 2004).

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ BLANKENHORN, *supra* note 43, at 11.

breadwinner.”⁵⁰ From this, it appears more clearly that his rejection of the New Father is, at least in part, based on a belief that children need a parent who performs the parenting tasks traditionally assigned to fathers. He explains that children need “physical protection,” “money and other material resources,” and “paternal cultural transmission,” the latter of which he defines as “a father’s distinctive capacity to contribute to the identity, character, and competence of his children.”⁵¹

Popenoe concurs that children need a parent who fulfills the traditional father roles of “protector and provider for women and children”⁵² and supplier of “discipline and authority.”⁵³ “Especially for boys, the role of fathers in setting rules and limits, enforcing discipline, and maintaining parental authority should not be underestimated,” but girls as well as boys benefit from “the father’s style of play,”⁵⁴ by which he means the traditional father role of providing “rough-and-tumble” type activities that include “more physical games” and “require the competitive testing of physical and mental skills.”⁵⁵ Along similar lines, a New Jersey court wrote in 2000 that “each child needs a father” in the sense of a parent who fills traditional father roles such as providing “financial support,” showing “the child how to fish, catch a baseball, or hit a tennis ball,” and “teach[ing] the child that courage is . . . the ability to carry on with dignity in spite of [fear].”⁵⁶ Not only do such formulations of the tasks performed by fathers blatantly rely on sex

⁵⁰ *Id.* at 15. He refers to these as the last two remaining anchors because he believes that historically fatherhood also encompassed two additional “traditional roles: irreplaceable caregiver [and] moral educator,” but that these aspects of the traditional father role have since been diminished. *Id.* at 16.

⁵¹ *Id.* at 25.

⁵² POPENOE, *supra* note 19, at 140.

⁵³ *Id.* at 142.

⁵⁴ *Id.* at 156.

⁵⁵ *Id.* at 143.

⁵⁶ Monmouth Cnty. Div. of Soc. Serv. v. R.K., 757 A.2d 319, 331–32 (N.J. Super. Ct. Ch. Div. 2000) (quotations omitted).

stereotypes regarding the role that men should play as parents, but a reference to tennis in particular also evidences a class bias as upper-class men are more likely to prefer this sport and have the time and monetary resources to engage in it.⁵⁷

The notion that children need a father in that they need a parent who performs a traditional father role has most recently been endorsed by the Obama Administration. Unlike Blankenhorn, President Obama has embraced rather than rejected the “New Father,” and has indicated firm support for the notion that fathers should co-parent equally with mothers and increase their involvement with and responsibility for their children.⁵⁸ That being said, however, several parts of his speech announcing the launching of the new “Fatherhood and Mentoring Initiative” on June 21, 2010, suggest that a primary reason why children need fathers is that they need a parent who fulfills the traditional father role of being the family’s breadwinner. For example, after acknowledging the “difficult economic times” the United States is currently facing, he observed that:

[A] lot of fathers are worried about whether they’re going to be able to keep their job, or find a job, or whether they’ll be able to pay the bills and give their children the kinds of opportunities that if they didn’t have them

⁵⁷ See Thomas C. Wilson, *The Paradox of Social Class and Sports Involvement: The Roles of Cultural and Economic Capital*, 37 INT’L REV. SOC. SPORT 5, 5–6 (2002). Wilson finds that “the higher one’s social class, the more likely one is to be involved in sports,” but also that the higher one’s class, the less likely one is to be involved in certain “prole” sports, so-called because they are avoided by the upper classes and have therefore become associated with the proletariat” or lower classes. For example, Wilson cites studies in which the upper classes were found more likely than the lower classes to play golf and tennis but less likely than the lower classes to be interested in wrestling or boxing.

⁵⁸ As he has indicated in saying, “We’ve got too many mothers out there forced to do everything all by themselves. . . . [T]hey shouldn’t have to do it alone. The work of raising our children is the most important job in this country, and it’s all of our responsibilities—mothers and fathers.” Barack Obama, President of the United States, Promoting Responsible Fatherhood: Fatherhood & Mentoring Initiative (June 21, 2010) (transcript available at <http://www.fatherhood.gov/media/320/5> (last visited Oct. 5, 2011)).

themselves, at least they wished for their children. And there are a lot of men who are out of work and wrestling with the shame and frustration that comes when you feel like you can't be the kind of provider you want to be for the people that you love.⁵⁹

He then went on to describe the importance of ensuring that fathers get "caught up on child support payments" and how the nation must "support fathers who are willing to step up and be good partners and parents and *providers*."⁶⁰ Although not every parenting task he mentioned in the speech was one traditionally allocated to fathers,⁶¹ his concluding remarks about the "decision to be a good father" that "men across this country are making every single day" depict fathers "coaching soccer, Little League; scrimping and saving, and working that extra shift so that their children can go to college."⁶²

D. Definition 4: Children need a "father" in that they need a parent in addition to, complementary to, and/or different from a mother.

Various father-promotion crusaders have emphasized that children need a father in that they need a parent who is complementary to or different from a mother, with the assumption that these two complementary parents will be related

⁵⁹ *Id.*

⁶⁰ *Id.* (emphasis added).

⁶¹ For example, he urges fathers to attend school assemblies and parent-teacher conferences, be present at family meals, read bedtime stories, and take their children to the park, as well as offer their children encouragement, mentoring, and daily acts of love. *Id.*

⁶² *Id.*

via a heterosexual marriage.⁶³ For example, Blankenhorn describes fatherhood as “a social invention designed to supplement maternal investment in children with paternal investment in children.”⁶⁴ The principal benefit of this “parental alliance”⁶⁵ between a father and mother (the latter being defined in this instance as a female parent) is that it enables children to “learn about male-female relationships by seeing how their parents relate to each other.”⁶⁶ According to Popenoe, having parents of “opposite” sexes “provides children with a model of [a] meaningful heterosexual relationship” and teaches them how to treat persons of the opposite sex.⁶⁷ In fact, Popenoe goes as far as to suggest that “gender-differentiated parenting,” that is, having parents of complementary/different genders, “is of such importance” that even in “gay or lesbian [couples], one partner commonly fills the male-instrumental role while the other fills the female-expressive role.”⁶⁸ One additional reason offered by Parker to explain why children need a parent who is complementary to or different from their mother/female-parent is that children “develop [their] sense of ‘self’ from the ways in which [they] interact with both [their] same-sex and [their] opposite-sex parents” and their “success in future relationships hinges to some degree on how [they] navigate those first

⁶³ Indeed, those who support limiting marriage to heterosexual unions consisting of “one man and one woman” argue that the very purpose of marriage is to “bring[] together men and women so children can have mothers and fathers.” See *Marriage Talking Points: Same-Sex Marriage: Answering the Toughest Questions*, NAT’L ORG. FOR MARRIAGE, <http://www.nationformarriage.org/site/c.0mL2KcN0LzH/b.5075687/apps/s/content.asp?ct=4507909> (last visited Oct. 5, 2011).

⁶⁴ BLANKENHORN, *supra* note 43, at 25.

⁶⁵ *Id.* at 18.

⁶⁶ POPENOE, *supra* note 19, at 147.

⁶⁷ *Id.*

⁶⁸ *Id.* But cf. NAT’L ORG. FOR MARRIAGE, *supra* note 63 (“Two men might each be a good father, but neither can be a mom. The ideal for children is the love of their own mom and dad. No same-sex couple can provide that.”).

relationships” with their same-sex parent and opposite-sex parent.⁶⁹

The Obama Administration has also endorsed the assumption that children’s needs are best met when they are raised by two parents who are related via a heterosexual marriage. Unlike Blankenhorn, Popenoe, and Parker, however, the Obama Administration has not emphasized that children need a father in that they need two parents of complementary or different sexes, but rather that children need a father in that they need “a parent in addition to a mother.” The rationale offered to support this notion is that two parents in a healthy marriage are better than one. For example, the government-sponsored National Responsible Fatherhood Clearinghouse website urges fathers that they are “important” to their children because “compared to living with both parents, living in a single parent home doubles the risk that a child will suffer physical, emotional or educational neglect.”⁷⁰ In addition to reducing the likelihood of harm, a father’s added presence increases the likelihood that children will “do well in school, have healthy self-esteem, [and] exhibit empathy and pro-social behavior.”⁷¹ As President Obama has concluded, “children benefit not just from loving mothers and loving fathers, but from strong and loving marriages as well.”⁷² Even when the two heterosexual parents later become divorced, father-promotion crusaders continue to insist that “[c]hildren do best with a father and a mother.”⁷³ Therefore, in the event of divorce, joint-custody shared by the mother and father becomes the next best alternative according to commentators such as Sheila Schwartz, who argues that “even

⁶⁹ PARKER, *supra* note 17, at 43.

⁷⁰ *Father Presence*, NAT’L RESPONSIBLE FATHERHOOD CLEARINGHOUSE, U.S. DEP’T OF HEALTH & HUMAN SERV., <http://www.fatherhood.gov/practitioners/for-your-fathers/father-presence> (last visited Oct. 5, 2011).

⁷¹ *Id.*

⁷² Obama, *supra* note 58.

⁷³ Sheila F. G. Schwartz, *Toward a Presumption of Joint Custody*, 18 FAM. L.Q. 225, 230 (1984).

when the relationship between the [divorced] parents is not ideal, the child needs and uses the father."⁷⁴

II. Disrupting the Sex-Stereotyped Father

Although it is unlikely that the courts, political figures, and commentators discussed in Part I of this Article were envisioning a gay parent when insisting that children need a father, it appears that gay fathers could, at least in theory, fulfill the needs served by having a parent who fits each of the four aforementioned definitions of "father." A gay father can be a "male parent" in the sense of a person assigned the sex of male at birth based on his genitalia. Stereotypes of "effeminate" gay men notwithstanding, a gay father can also be a "masculine parent."⁷⁵ A gay father who, for example, acts as a disciplinarian, engages in rough-and-tumble play, and serves as his child's primary source of financial support, is displaying the parenting behaviors traditionally associated with fathers and can therefore be a parent who performs the role traditionally associated with fathers. As for the notion that two parents are better than one, two gay fathers in a healthy relationship⁷⁶ who are co-parenting with each other should be able to provide the benefits associated

⁷⁴ *Id.* at 232.

⁷⁵ Kittiwut Jod Taywaditcp writes that "male homosexuality has long been associated with effeminacy throughout the history of Western societies" and research has "tended to confirm that the effeminate and androgynous stereotypes are accurate at least for a considerable portion of contemporary Western gay men." However, the research has also shown that the majority of gay men who were gender-nonconforming during their childhood "gradually become less feminine by the onset of adolescence," a process he terms "defeminization," as a result of "omnipresent and unrelenting pressure" from their peers and society to exhibit masculine behavior. Indeed, gay men express "some of the most visible attacks against effeminacy" despite the fact that they would seem to be the "most likely to understand what it is like to be stigmatized." Taywaditcp suggests that the anti-effeminacy attitudes of many gay men "may be an extension of the dominant ideology they have adopted from society at large," revealing that gay men have not wholly escaped the influence of "hegemonic masculinity." Kittiwut Jod Taywaditcp, *Marginalization Among the Marginalized: Gay Men's Anti-Effeminacy Attitudes*, 42 J. HOMOSEXUALITY 1, 2-3, 5-7, 16 (2001).

⁷⁶ This relationship could also be a marital one if the law were to permit gay couples to get married, and therefore any added benefits thought to result from the fact that there are not just two parents but two *married* parents could also be produced by two married gay fathers.

with having two parents. It could also be possible for a gay father couple to fulfill the needs met by having two parents who are of complementary or different male and female sexes if we think in terms of gender identity and expression. For example, a gay father couple that consists of a cisgender man and a transgender man would both express a male gender identity but could still be of "different sexes" (if we determine sex based on one's genitalia, as would the father-promotion crusaders) if the transgender male parent had not surgically altered his genitalia in making his transition.⁷⁷ Moreover, even if both fathers were assigned the sex of male at birth and express a male gender identity, there is evidence that gay fathers can and do ensure that their children have adequate exposure to adult women who can serve as role models of a different or complementary sex.⁷⁸

A survey of the empirical and anecdotal research collected by sociologists and psychologists can be used to test whether the theory that gay fathers fit the four definitions of "father" outlined in Part 1 is true in practice. At the outset, it must be noted that although the first studies of gay male parents were conducted in the late 1970s,⁷⁹ research on the parenting practices of gay men remains limited. Researchers have identified "a variety of issues that are unique to the parenting situations of gay fathers," but "[v]ery little is known . . . of the quality of their

⁷⁷ It should be noted, however, that this Article does not purport to address the situation of a gay parenting couple that consists of two trans men or one trans man and one gay man because unfortunately psychology and sociology researchers have not yet explored this issue in depth. Note also that the Author is not suggesting that one's sex should or can in every instance be determined based on what kind of genitalia one has either at birth or later in life, only that a father-promotion crusader is likely to determine one's sex based solely on one's genitalia.

⁷⁸ FREDERICK W. BOZETT, *Gay Fathers*, in GAY AND LESBIAN PARENTS 3, 15 (1987).

⁷⁹ See, e.g., Dorothy I. Riddle, *Relating to Children: Gays as Role Models*, 34 J. SOC. ISSUES 38 (1978); BRIAN MILLER, *Unpromised Paternity: The Life-Styles of Gay Fathers*, in GAY MEN: THE SOCIOLOGY OF MALE HOMOSEXUALITY 239-52 (Martin P. Levine ed., 1979); Raymond Michael Scallen, *An Investigation of Parental Attitudes and Behaviors in Homosexual and Heterosexual Fathers* (Aug. 18, 1981) (unpublished Ph.D. dissertation, California School of Professional Psychology) (on file with ProQuest Dissertations and Theses).

parenting as compared with non-gay fathers []or of the nature of their childrearing experiences in general.’⁸⁰ Part of the reason for the lack of studies may be the difficulty of locating research participants. Particularly at the time of the earliest studies, gay fathers were difficult to locate because many of them were still “in the closet,” living in heterosexual marriages or divorced but not publicly revealing their gay identity.⁸¹ Even today when gay fathers are more likely to be “out,” it remains difficult to amass enough research participants such that the research findings will be generalizable because the population under study is a

⁸⁰ JERRY J. BIGNER & FREDERICK W. BOZETT, *Parenting by Gay Fathers*, in *HOMOSEXUALITY AND FAMILY RELATIONS* 155, 160 (F. W. Bozett & Marvin B. Sussman eds., 1990); see also CHARLOTTE J. PATTERSON, *Gay Fathers*, in *THE ROLE OF THE FATHER IN CHILD DEVELOPMENT* 410 (Michael E. Lamb ed., 4th ed., 2004) (noting that “research on gay fathers and their families is relatively recent and still sparse”).

⁸¹ See generally MILLER, *supra* note 79, at 239–48. Miller’s 1979 study of forty men who “who rate[d] themselves as homosexual” on the Kinsey scale and had “regular interaction with and legal responsibility for one or more children” primarily aimed to understand how these men could reconcile the then-seemingly-contradictory identities of “gay” and “father.” He found that gay fathers typically had one of four lifestyles, which he labeled as follows: (1) “trade father” (living with his wife and remaining closeted while struggling to accept his gay identity); (2) “homosexual father” (living with his wife and self-identifying as gay but not publicly); (3) “gay father” (living apart from his wife and being gay publicly only to a limited extent); and (4) “publicly gay father” (living apart from his wife and proudly acknowledging his gay identity in public).

minority within a minority.⁸² The studies are further limited in that the participants are generally not of diverse racial and socioeconomic backgrounds.⁸³

Moreover, the fact that gay men come to be fathers in a variety of different ways can become a confounding variable that complicates attempts to make generalizations about gay fathers.⁸⁴ Attempts to draw generalized conclusions from the research about the parenting practices of gay fathers can also be complicated by variables such as whether the gay father was

⁸² While there are competing estimates of the percentage of people in America who identify as gay or lesbian, the consensus is that it is somewhere in the range of "2 percent to 10 percent of the total population." Of that estimated percentage, which combines both lesbians and gay men, a smaller percentage represents only gay men and an even smaller percentage of those gay men are parents. See, e.g., DAVID M. SMITH, *GAY AND LESBIAN FAMILIES IN THE UNITED STATES: SAME-SEX UNMARRIED PARTNER HOUSEHOLDS: A PRELIMINARY ANALYSIS OF 2000 UNITED STATES CENSUS DATA, A HUMAN RIGHTS CAMPAIGN REPORT 2* (2001). Bigner and Bozett wrote in 1990 that "[r]esearchers estimate that approximately 20 to 25 percent of self-identified gay men are fathers." See BIGNER & BOZETT, *supra* note 80, at 156. More recently, Baumle, Compton, and Poston, using data from the 2000 U.S. Census, found that "18 percent of male same-sex partners . . . have children present in their households." Interestingly, these authors also found that "[w]ith regard to the probability of children being present in the household, . . . same-sex unmarried partners who indicated that they had been 'separated,' 'divorced,' or 'widowed' on the marital status question are almost three times as likely to have children in their household compared to those who were categorized as 'never-married' or responded 'not applicable' to the marital status question. This lends support to the notion that children in same-sex households may have mainly come from previous heterosexual relationships. Further, we find no significant effect of restrictive adoption laws and regulations on the presence of children in same-sex households." See AMANDA K. BAUMLE, D'LANE R. COMPTON, & DUDLEY L. POSTON, JR., *SAME-SEX PARTNERS: THE SOCIAL DEMOGRAPHY OF SEXUAL ORIENTATION 11* (2009).

⁸³ See, e.g., Dana Berkowitz, *Gay Parenting: Situated in a Straight World 3* (July 31, 2008) (unpublished manuscript), available at http://www.allacademic.com/meta/p237163_index.html ("Consistent with other research on gay fathers . . . the gay fathers participating in my research were White and predominantly upper middle class.").

⁸⁴ Most gay fathers are divorced men who were previously in heterosexual marriages and now have various custody and visitation agreements, but others "have become foster or adoptive parents after coming out as gay." Still others become parents "by fathering biological children with surrogate mothers" or by "conceiv[ing] and rais[ing] children jointly with a woman or women with whom the men are not sexually involved." See PATTERSON, *supra* note 80, at 398-400.

parenting as part of a couple or as a single parent and, if the latter, whether or not the gay father was the child's primary custodian. Furthermore, making comparisons between gay fathers and heterosexual fathers is not entirely straightforward because not all of the studies have carefully matched the gay research participants with a control group of heterosexual men.⁸⁵

Even though the research on gay fathers is limited, the studies of gay fathers that do exist to date seem to cast doubt on the hypothesis that gay fathers in practice exemplify the four definitions of "father" outlined in Part I. To the contrary, the research suggests that gay fathers are in fact disrupting several of the father-promotion crusaders' definitions of "father." In particular, it appears that gay fathers do *not* behave like masculine parents and do *not* perform the roles traditionally associated with fathers to the same degree or with the same emphasis as do their heterosexual counterparts. Indeed, several sociologists have conducted studies finding that gay fathers adopt parenting behaviors and practices more "feminine" than typical heterosexual fathers⁸⁶ and are more likely than heterosexual fathers to perform functions traditionally associated with a mothering role or at least deemphasize certain functions traditionally associated with a fathering role.⁸⁷ Although the scholars of gay fatherhood may be reinforcing the stereotypes surrounding maternity in drawing such conclusions, these scholars make a positive contribution in highlighting the ways in which gay fathers disrupt the sex-stereotyped definitions of fathers set forth by the father-promotion crusaders. The research suggests that the parenting practices of gay fathers expand the father-promotion commentators' narrow definitions of what it means to be a "father." Gay fathers lend support to the argument that sex stereotypes need not govern men's parenting behaviors and parenting roles need not be divided and performed based on sex.

⁸⁵ See, e.g., Scallen, *supra* note 79, at 34 (noting the limitations of the studies conducted by Miller and Bozett because they were mainly descriptive and lacked "a systematic comparison on clearly established criteria between homosexually oriented fathers and heterosexually oriented fathers").

⁸⁶ See *infra* notes 97, 102, 112 and accompanying text.

⁸⁷ See *infra* notes 115, 124, 127, and 129 and accompanying text.

In the subsections below, this Article discusses the findings of the research on gay fathers from the 1970s through 2010. Although these findings are not conclusive and a substantial amount of additional research remains to be done, the studies conducted to date provide some evidence for the following four observations:

(1) Gay men's desire to become fathers may be described as more "maternal" than "paternal" in nature.⁸⁸

(2) Gay fathers may be less likely than heterosexual fathers to display "traditionally masculine" parenting behavior, such as maintaining emotional restraint and distance, and more likely to exhibit behaviors such as emotional warmth and communicativeness, which have traditionally been thought of as "feminine" parenting behaviors but have also recently been characterized as "progressively masculine" parenting behavior.⁸⁹

(3) Gay fathers may be less likely than their heterosexual counterparts to perform or emphasize certain parenting roles traditionally associated with fathers, such as being a disciplinarian and the primary breadwinner, and more likely to engage in roles traditionally associated with mothers, such as providing nurturance and caregiving.⁹⁰

(4) Gay father couples may be more likely than heterosexual parent couples to achieve a more equitable division of childcare tasks because they have not determined who should

⁸⁸ See Stacey, *infra* note 93 and accompanying text.

⁸⁹ See *infra* notes 97, 102, 112 and accompanying text.

⁹⁰ See *infra* notes 115, 124, 127, 129 and accompanying text.

perform those tasks based on stereotyped sex differences.⁹¹

A. Gay Fathers: "Maternal" Motivations to Become a Parent

The first indication that gay fathers may be disrupting sex stereotypes surrounding parenting comes from research suggesting that gay men may, like women, be more likely than heterosexual men to have a strong desire to become parents in the first instance. As Judith Stacey notes, "men's biological procreative disadvantage represents a significant barrier to gender equity" in terms of "pursuing parenthood solo," but this barrier "is one that gay men appear more motivated than their heterosexual counterparts to hurdle."⁹² She writes that "[c]ontemporary openly gay paternity, which by definition is never accidental, requires the determined efforts of at least one gay man [with a] passion for parenthood A man, that is, whose parental desire might more accurately be understood as maternal than as paternal."⁹³ If this is indeed true, perhaps it is unsurprising to find that, as compared to heterosexual fathers, gay fathers are also "reported to have greater satisfaction with their first child."⁹⁴ In addition, "evidence suggests that straight men are disproportionately less likely than gay men . . . to regard full-time, at-home parenting as their calling."⁹⁵ Although describing a strong urge to become a parent as a "maternal" characteristic risks reinforcing the stereotype that women, unlike men, possess a "maternal instinct" that drives their desire to bear

⁹¹ See *infra* notes 133, 137, 140 and accompanying text.

⁹² Judith Stacey, *Gay Parenthood and the Decline of Paternity as We Knew It*, 9 *SEXUALITIES* 27, 47 (2006) [hereinafter Stacey, *Gay Parenthood*].

⁹³ *Id.* at 48–49.

⁹⁴ BIGNER & BOZETT, *supra* note 80, at 163.

⁹⁵ Stacey, *Gay Parenthood*, *supra* note 92, at 47 (citing "an analysis of at-home parenting data in the 2000 census [which] found that gay male couple parenting families were even slightly more likely than married heterosexual or lesbian couple parents to include a full-time at-home parent").

children,⁹⁶ Stacey's observation can be understood to suggest that gay fathers disrupt the corollary stereotype which posits that men do not desire to become parents with the same fervor as do women.

B. Gay Fathers: More "Feminine" / Less "Traditionally Masculine" Parenting Behaviors

Research conducted by a number of scholars suggests that gay fathers disrupt sex stereotypes in parenting by behaving in a manner that is more "feminine," or at least not as "masculine," as that of their heterosexual counterparts. Raymond Scallen describes one study conducted by Bozett in 1980 as finding that gay fathers "emphasiz[e] the expressive nature of the parent-child interaction."⁹⁷ Scallen concludes from his own study as well that "gay fathers may be described as more committed [than heterosexual fathers] to a view of nurturance as an important aspect of their fathering."⁹⁸ He defines nurturance as "an expressive, active, caretaking interest in the child," a "role dimension" that has traditionally been "considered the province of the maternal role." While noting that the heterosexual fathers he surveyed in the early 1980s were also more likely than heterosexual fathers of previous decades to engage in expressive, nurturing behavior, he found that the gay fathers were particularly "more nurturant" than the heterosexual fathers surveyed.⁹⁹ Along similar lines, a 1989 study by Bigner and Jacobsen found that "gay fathers are . . . more sensitive and

⁹⁶ See, e.g., Kathleen O'Grady, *Maternal Instinct: Women's Lot or a Lot of Bunk?*, GLOBE & MAIL, Jan. 22, 2000, at D2 (reviewing SARAH BLAFFER HRDY, *MOTHER NATURE: A HISTORY OF MOTHERS, INFANTS, AND NATURAL SELECTION* (1999)). O'Grady writes that "[t]here is hardly any construct more immutable in scientific discourse than the notion of 'the maternal instinct.'" Women who lack the stereotypical maternal instinct by "reject[ing] childbearing . . . are typed as pathological, 'unnatural' women." She notes that traditional Darwinian evolutionary biology suggests that "the female of any species has evolved to produce and nurture the species" but also highlights examples of "non-'mothering'" behavior that counters this stereotype, such as infanticide, abortion, and females of certain species that eat their young.

⁹⁷ Scallen, *supra* note 79, at 30.

⁹⁸ *Id.* at 67.

⁹⁹ *Id.*

responsive to the perceived needs of [their] children than nongay fathers.”¹⁰⁰

More recent studies have also noted the absence of masculine parenting behavior among gay fathers. For example, Biblarz and Stacey report that gay male co-parents “do not provide a double dose of ‘masculine’ parenting,” but rather “appear to adopt parenting practices more ‘feminine’ than do typical heterosexual fathers.” As evidence of this claim, they cite studies conducted in 2000 and 2006 which found that “when two gay men coparented, they did so in ways that seem[ed] closer, [albeit] not identical, to that of two lesbian women than to a heterosexual woman and man.”¹⁰¹ Similarly, Benson, Silverstein, and Auerbach argue that some gay men have “transform[ed] the fathering role in American culture”¹⁰² by creating a “new, culturally progressive definition of fathering [that] includes behaviors that were formerly thought of as mothering.”¹⁰³ They observe, as did Scallen, that both heterosexual and gay fathers have increased their sense of emotional closeness to their children as compared to heterosexual fathers of past generations, but report that the heterosexual fathers in their study were “still not as close to their children as their wives were” whereas approximately one-third of the gay fathers displayed a:

[L]evel of intimacy . . . more typical of the kind of closeness that occurs between mothers and children in U.S. culture. These fathers used a sense of intimacy with their children that was equivalent to a feminine model of parenting relationships in that the men and

¹⁰⁰ BIGNER & BOZETT, *supra* note 80, at 163–64 (citation omitted).

¹⁰¹ Timothy J. Biblarz & Judith Stacey, *How Does the Gender of Parents Matter?* 72 J. MARRIAGE & FAM. 3, 12 (2010) [hereinafter Biblarz & Stacey, *Gender of Parents*].

¹⁰² Adam L. Benson, Louise B. Silverstein & Carl F. Auerbach, *From the Margins to the Center: Gay Fathers Reconstruct the Fathering Role*, 1 J. GLBT FAM. STUD. 3 (2005).

¹⁰³ *Id.* at 19.

their children talked about very personal and emotional issues.¹⁰⁴

Benson, Silverstein, and Auerbach describe gay fathers' expanded model of fathering as one of "intimate fathering," which focuses on what men *feel* in relation to their children. "Intimate fathering" exceeds the model of "nurturing fathering," which primarily focuses on what men *do* in relation to their children.¹⁰⁵ They conclude that gay men who practice the intimate fathering model show that it is "possible for the father-child relationship to be as close as the mother-child bond."¹⁰⁶

These descriptions of gay fathers, which emphasize their emotional connections to and sensitivity toward their children, suggest that they tend to possess "expressive traits." As mentioned in Part I of this Article,¹⁰⁷ "expressive traits," as opposed to "instrumental traits," have traditionally been associated with femininity. Indeed, expressive traits are typically defined to encompass "sensitivity to the needs of others" and emotional "warmth."¹⁰⁸ However, it must be noted that describing sensitivity and emotional communicativeness as "feminine" traits risks perpetuating a stereotypical and circumscribed understanding of femininity. Sensitive to this problem, psychologists writing more recently than Twenge have resisted linking "instrumental" to "masculinity" and "expressive" to "femininity." As Nikos and Giorgos Bozionelos explain, "[i]nstrumentality or agency and expressiveness or communion correspond to the frequently used terms *masculinity* and *femin[in]ity*, respectively. However, sound discussions have rendered these terms conceptually misleading and their use should be avoided."¹⁰⁹ Benson, Silverstein, and Auerbach

¹⁰⁴ *Id.* at 23.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ See Twenge, *supra* note 37.

¹⁰⁸ Bozionelos & Bozionelos, *supra* note 37, at 423.

¹⁰⁹ *Id.* at 423 n.1.

engage in a similar form of resistance by opting not to label gay fathers' behavior as "feminine" but rather as a redefinition of the term "masculine." They argue that gay fathers, in shifting from the model of "nurturing fathering" toward a model of "intimate fathering," "have the potential to reconstruct masculinity."¹¹⁰ Specifically, they suggest that gay fathers' parenting behaviors will redefine masculinity such that it will no longer remain limited to "traditional masculinity" which "emphasized achievement, aggression, and restrictive emotionality." By contrast, gay fathers display "a more progressive masculinity that espouses a balance between work and family roles, collaborative power-sharing, and more emotional responsiveness."¹¹¹

Regardless of whether one chooses to define gay fathers' parenting style as "feminine" or "progressively masculine," it is apparent that gay fathers are disrupting sex-stereotyped parenting behaviors. One may argue that their behavior is more appropriately labeled as an expanded definition of masculinity, that this expanded definition of masculinity is really femininity by another name, or that "femininity" and "masculinity" are socially constructed categories with decreasing utility in describing increasingly complex and varied combinations of human behaviors. Either way, the social science research suggests that gay fathers are not conforming to the father-promotion crusaders' definition of "father" as a traditionally-defined "masculine" parent. Moreover, at least some evidence tends to suggest that gay fathers are not aiming to transmit traditional masculinity to their sons, and are thereby failing to fulfill the primary need served by having a masculine parent as conceived by the father-promotion crusaders. This evidence comes in the form of studies finding that "gay men [are] less inclined than heterosexual couples to promote gender

¹¹⁰ Benson, Silverstein & Auerbach, *supra* note 102, at 3.

¹¹¹ *Id.* at 16.

conformity in children.”¹¹² For example, gay fathers may be less likely to encourage their children to play with sex-typed toys.¹¹³

C. Gay Fathers: Performing Traditional “Mothering” Tasks / Not Performing Traditional “Fathering” Tasks

Another aspect of parenting in which gay fathers disrupt sex stereotypes is in embracing tasks or roles traditionally associated with mothering while rejecting or deemphasizing tasks or roles traditionally associated with fathering. The two main parental tasks traditionally associated with fathers are (1) being the primary breadwinner, and (2) being the disciplinarian.¹¹⁴ This first task, which may represent the “most traditional of paternal expectations,” places fathers in the role of being “the instrumental provider for the family, as well as the bridge for children between the home and the general society.”¹¹⁵ According to Scallen, however, gay fathers do not fully conform to the father-promotion crusaders’ sex-stereotyped definition of “father” which associates it with being the primary economic provider. Scallen’s study of heterosexual and gay fathers found that the heterosexual fathers were more likely than the gay fathers “to endorse economic providing as an espoused paternal role dimension.”¹¹⁶ As compared to heterosexual fathers, gay fathers appeared more “ready to assume that th[e] responsibility [of economic providing] is a shared one” and were “more likely to see the child’s mother as bearing some responsibility for the child’s economic support,” a finding “consistent with” the observation made in other research

¹¹² Biblarz & Stacey, *Gender of Parents*, *supra* note 101, at 12 (citations omitted).

¹¹³ Bozett, *supra* note 78, at 15 (citing a 1985 study by Turner, Scadden, and Harris which found that “about half of the [gay] fathers did not encourage sex-typed toys for their children”).

¹¹⁴ Benson, Silverstein & Auerbach, *supra* note 102, at 16 (describing the traditional fathering role as that of “a primary provider and emotionally distant disciplinarian”).

¹¹⁵ Scallen, *supra* note 79, at 68–69.

¹¹⁶ *Id.* at 63.

“regarding gay fathers’ concern for children adopting non-sexist, egalitarian views.”¹¹⁷

The finding that gay fathers are less endorsing than heterosexual fathers of the “economic providing paternal role expectation” does not mean, however, that gay fathers have rejected “fiscal responsibility.” Rather, it signifies “a rejection of the traditionally held role expectation involving the father as the *primary* provider.”¹¹⁸ Based on this finding, Scallen concluded that “homosexually oriented fathers appear to be generally more egalitarian in their viewpoints regarding sex role differentiation . . . [and] are more likely to actively encourage a questioning of traditionally held sex role expectations.”¹¹⁹

There is also evidence suggesting that gay fathers disrupt the father-promotion crusaders’ sex-stereotyped expectation that a father will be the principal disciplinarian. Reviewing a study conducted by Miller, Scallen identified “a trend among openly gay fathers toward less traditional paternal roles” by which he meant that gay fathers “tended to be less authoritarian” and “used less physical punishment.”¹²⁰ While Bigner and Jacobsen found that gay fathers were “more strict” and more likely to “consistently emphasize the importance of setting limits on [their] children’s behavior,”¹²¹ Patterson suggests that taken in conjunction with research demonstrating that gay fathers tend to exhibit “greater warmth and responsiveness,” the finding that gay fathers also engage in “greater control and limit setting” may indicate that “gay fathers are more likely than their heterosexual counterparts to exhibit authoritative patterns of

¹¹⁷ *Id.* at 69 (citation omitted).

¹¹⁸ *Id.* at 78 (emphasis in original).

¹¹⁹ *Id.*

¹²⁰ *Id.* at 28.

¹²¹ BIGNER & BOZETT, *supra* note 80, at 163–64 (citation omitted).

parenting behavior such as those described by Baumrind."¹²² According to Baumrind, an authoritative parent attempts to guide his or her child's behavior "in a rational, issue-oriented manner" in which the parent "encourages verbal give and take, shares with the child the reasoning behind [the parent's] policy, and solicits [the child's] objections when [the child] refuses to conform."¹²³ Gay fathers may also disrupt the sex-stereotyped definition of "father" which associates fathering with being a disciplinarian in that they reject the use of corporal punishment to a greater degree than heterosexual fathers. In a recent study conducted by Suzanne Johnson and Elizabeth O'Connor it was found that fewer than 15 percent of the gay and lesbian parents included in the study "resort[ed] to physical punishment, demonstrat[ing] . . . one way in which gay and lesbian parents really do differ significantly from heterosexual parents in their ways of interacting with their children."¹²⁴

In addition to deemphasizing the two main tasks traditionally associated with fathering, gay fathers have also disrupted sex-stereotyped parenting by displaying a greater tendency than heterosexual fathers to engage in tasks traditionally associated with mothering. Studies conducted in 1980 and 1993 found that gay fathers were "especially involved in child care participation"¹²⁵ and were "more endorsing of nurturance as an important paternal role expectation than . . .

¹²² PATTERSON, *supra* note 80, at 404. See Diana Baumrind, *Effects of Authoritarian Parental Control on Child Behavior*, 37 CHILD DEV. 887 (1968). Baumrind posits three types of parenting styles that differ according to their modes of parental control: permissive, authoritarian, and authoritative. Permissive parents avoid restricting their children's behavior and act "in a nonpunitive, acceptant, and affirmative manner toward" their children. *Id.* at 889. Authoritarian parents expect children to be obedient and "favor punitive, forceful measures to curb self-will" when that self-will is in conflict with the parents' "absolute standard" of proper conduct. *Id.* at 890.

¹²³ Baumrind, *supra* note 122, at 891.

¹²⁴ SUZANNE M. JOHNSON & ELIZABETH O'CONNOR, *THE GAY BABY BOOM: THE PSYCHOLOGY OF GAY PARENTHOOD* 166-67 (2002).

¹²⁵ Scallan, *supra* note 79, at 31 (reviewing interview information collected by Bozett in his 1980 study of gay fathers).

heterosexually oriented fathers.”¹²⁶ Another study focusing not on gay fathers *per se* but on gay males in relationships found that:

Most gay men are positively disposed toward tasks and attitudes usually contained in female social scripting. Learning to cook, operating a sewing machine, setting a table, expressing feelings, showing vulnerability, and wanting to nurture are skills and attitudes that many gay men have developed in spite of that often-heard warning, “Little boys don’t do that.”¹²⁷

Similarly, Bigner and Bozett assert that “gay fathers may be less conventional and more androgynous than nongay fathers,” and “as such, they may incorporate a greater degree and combination of expressive role functions than more traditionally sex-role oriented nongay fathers.” These expressive role functions, according to Bigner and Bozett, “are found more conventionally in the traditional female mothering role.” By contrast,

The cultural stereotype of the father role among traditional males is that they: (1) generally are not interested in children nor in childrearing issues; (2) view the occupational role as their primary parenting identity; (3) are less competent caregivers than women; and (4) are less nurturant than women toward children.

Bigner and Bozett conclude that “[i]t is possible that nongay fathers adopt this [traditional, sex-stereotyped father role] as their parenting style while gay fathers may demonstrate a blending of the qualities traditionally associated with both mother and father role images.”¹²⁸ The notion that gay fathers blend traditional mothering and fathering roles to a greater degree than heterosexual fathers is further evidenced by the most

¹²⁶ *Id.* at 63.

¹²⁷ DAVID P. MCWHIRTER & ANDREW M. MATTISON, *THE MALE COUPLE: HOW RELATIONSHIPS DEVELOP* 49 (1984).

¹²⁸ BIGNER & BOZETT, *supra* note 80, at 164.

recent study of gay fathers, conducted in 2010 by Dwight Panozzo. Panozzo found that the gay male parents in his study:

Perceive[d] themselves as fulfilling both maternal and paternal roles to a high degree On a 0 to 10 point scale with 0 for not fulfilling the role at all to 10 for fulfilling it to a very high degree, the mean score for 'fathering' was 8.77 with a range of 3 to 10. 'Mothering,' on the same scale, scored 7.70 for the partners with a range of 0 to 10 The degree to which the two parenting roles are assumed by each partner is positively correlated to a moderate degree . . . indicating that, on the average, the more that one inhabits one of the parenting roles the more one will inhabit the other parenting role (and vice versa), i.e. the expression of one role is not at the expense of the other.¹²⁹

Some anecdotal evidence also supports the argument that gay fathers are more likely than their heterosexual counterparts to engage in tasks traditionally associated with mothering. Dana Berkowitz reports, "[q]uite often, gay fathers [find] themselves in spaces dominated by women, specifically mothers." For example, she cites a gay couple that describes how one of the gay fathers, Nico, "attended an event called 'The New Mom's Stroll'" in which new parents went on a walking tour of Manhattan. "Nico was the only father present at the event." As a result of his presence and in effort to "reflect a more inclusive representation of families," the name of the event was later changed to "The New Parent's Stroll." Similarly, another gay man reported "that he is usually the only father present at Gymboree when he accompanies his daughter to play there."¹³⁰ Yet another gay father, exasperated when a stranger commented

¹²⁹ Dwight Panozzo, *Gay Male Couples Who Decide to Parent: Motivations, Division of Child Care Responsibilities, and Impact on Relationship and Life Satisfaction* 59 (Dec. 2010) (unpublished Ph.D. dissertation, New York University School of Social Work) (on file with ProQuest Dissertations and Theses).

¹³⁰ Berkowitz, *supra* note 83, at 16.

"you're such . . . a good friend" upon observing him mention to his partner that he would change their daughter's diaper, responded "I am not a friend, I'm like her mommy, you know!"¹³¹

It must be noted that labeling cooking, caregiving, and changing diapers as tasks comprising a "mothering" role risks reinforcing sex stereotypes that have burdened women with the majority of childcare duties. However, the point is that gay fathers disrupt sex-stereotyped parenting roles which traditionally proscribe fathers from engaging in such tasks and prescribe an alternative set of tasks that chiefly include breadwinning and administering discipline. Although gay fathers do financially support and discipline their children, they have deemphasized the significance of these tasks in defining "father" and have instead embraced other tasks that have long been central to the definition of "mother."

D. Gay Fathers: Equitable Division of Childcare Tasks Not Based on Sex

A final way in which it appears that gay fathers disrupt the father-promotion crusaders' sex-stereotyped definitions of "father" is by tending to avoid allocating childcare tasks in a way that mimics the sex-differentiated division of parenting duties traditionally found among heterosexual couples. Instead of dividing parenting tasks based on sex-stereotyped expectations about which tasks a parent of a certain gender should perform, gay father couples are more likely to allocate childcare responsibilities according to each parent's individual talents and interests. Assigning childcare responsibilities to each parent on the basis of personal aptitude and preferences rather than on the basis of traditional sex-differentiated parenting roles challenges the father-promotion crusaders' goal of ensuring that children have two parents who perform roles sufficiently complementary to or different from each other such that they can model heterosexual relationships and stereotypical gender roles for males and females. In addition, gay father couples may be more likely than heterosexual parent couples to achieve a more equitable division of childcare tasks because they have not

¹³¹ *Id.* at 9.

determined who should perform those tasks based on sex-stereotyped parenting roles in which the female parent is traditionally expected to perform a larger share of the childcare duties.

According to one study not of gay fathers *per se* but of gay male couples, each gay man in the partnership “brings attitudes and skills that are traditionally both masculine and feminine.” This allows the partners to have “an easy interchangeability in developing complementarity” because “[w]ithout thinking, one begins to take on tasks that the other does not do or does not do as well” and “[e]ach partner can fill in for the other at any task.”¹³² Other studies suggest that the non-sex-based allocation of tasks that the gay couple develops prior to becoming parents continues even after they begin parenting. In a study conducted by Daniel McPherson, gay couples were found to “report significantly more equitable [parenting] task arrangements than d[id] heterosexual couples in the specific area[s] of Childcare and Family Tasks.”¹³³ This finding was made despite the fact that the survey sample of heterosexual and gay parent couples was “composed almost exclusively of dual-worker couples.” Even where both parents in the heterosexual couple were working outside the home, they “still t[ook] on a more traditional gender-differentiated role arrangement.”¹³⁴ Furthermore, when measuring “[w]ho [d]oes [w]hat,” or “how close or far apart parents are in their reported arrangement and sharing of parental tasks and roles,” gay parent couples displayed “significantly less difference between partners’ scores than d[id] heterosexual parents.” This measurement indicates that gay parent couples had “significantly less differentiation between their parenting roles than d[id] heterosexual

¹³² MCWHIRTER & MATTISON, *supra* note 127, at 49–50.

¹³³ Daniel William McPherson, *Gay Parenting Couples: Parenting Arrangements, Arrangement Satisfaction, and Relationship Satisfaction* 57 (1993) (unpublished Ph.D. dissertation, Pacific Graduate School of Psychology) (on file with ProQuest Dissertations and Theses). “[N]o significant difference between heterosexual parents and gay parents [was found] in the area of Family Decisions, but heterosexual couples reported significantly more nonequitable parenting task arrangements than did gay couples in the areas of ‘Childcare’ and ‘Family Tasks.’” *Id.* at 53, 55.

¹³⁴ *Id.* at 77.

couples.”¹³⁵ In addition, McPherson found that gay parent couples were significantly more satisfied with their division of childcare responsibilities and were less likely than heterosexual parent couples to wish they could change their present parenting task arrangements.¹³⁶

In a more recent study that included both lesbian and gay parent couples, the findings were similar to that of McPherson’s. Johnson and O’Connor’s 2002 study found, “overall, very few couples reported that one partner took on all or most of the responsibilities associated with maintaining a household or taking care of children.” Instead, the gay and lesbian parents “generally describe[d] a very egalitarian arrangement.” The statistics were as follows: Fifty percent of the research participants reported that childcare tasks were shared equally and 49 percent reported that household tasks were shared equally.¹³⁷ Although Johnson and O’Connor note that among adoptive gay fathers the parents were “not strictly equal in their sharing of housework” and “childcare responsibilities,” in that the father who was more involved with the household tasks tended to do more of the childcare as well, they still concluded that as a group, the lesbian and gay parents made “a real effort . . . to share the tasks equally, and half of them fe[lt] they d[id] just that” while the remainder divided the tasks “nearly equally . . . with one partner doing slightly more of the work associated with childcare and with running a house.”¹³⁸ In sum, they found that among gay and lesbian families, “there was no rigid allocation of roles, as is typically found in heterosexual families.”¹³⁹

Panozzo’s 2010 study of gay fathers may to some degree call into question the findings of prior researchers in that he found that gay fathers do not in fact share parenting tasks as

¹³⁵ *Id.* at 57.

¹³⁶ *Id.* at 62.

¹³⁷ JOHNSON & O’CONNOR, *supra* note 124, at 151.

¹³⁸ *Id.* at 157–58.

¹³⁹ *Id.* at 158.

equally as they believe they do.¹⁴⁰ Nonetheless, Panozzo also found that “in many cases the fathers” were indeed “trading off tasks, thereby counterbalancing the child care responsibility [that] each [was] taking on (e.g. ‘You get up at night to tend our child’ and ‘I will do our child’s laundry’).”¹⁴¹ Panozzo measured the sharing of 20 childcare tasks¹⁴² among the gay father couples on a scale of zero to twenty, “with 20 indicating complete sharing or counterbalancing of the 20 tasks and 0 indicating that one of the partners was completely responsible for all of the 20 tasks.” He found that the

[S]hared parenting score for these families ranged from 1 to 20 with a mean score of 14.65 . . . indicating that nearly 15 of the 20 tasks had been ‘shared about equally’ or counterbalanced between the partners while 5 of the tasks had been handled by one of the partners without a corresponding assignment of the named child care tasks to the other.¹⁴³

In discussing the finding that gay fathers tend to maintain a relatively egalitarian division of childcare responsibilities rather than adopt a traditional division of labor in which one parent does the majority of the childcare, scholars generally attribute this difference between gay and heterosexual parent couples to the fact that “among gay . . . couples, there is no automatic gender-related assumption that one partner will have most of the responsibility for running the household and taking care of the

¹⁴⁰ Panozzo, *supra* note 129, at 92. Panozzo found that fifty-six percent of the gay fathers believed they were sharing the childcare about equally when asked to make a global assessment of their parenting arrangements, but data from a task-by-task measurement of the division of parenting arrangements “cast[] some doubt on this belief because only 12% of the couples achieved equality in their scoring.”

¹⁴¹ *Id.* at 56.

¹⁴² *Id.* These tasks included, for example, feeding, dressing, playing with, consoling, and disciplining the child, as well as “dealing with doctors, arranging playdates, arranging child care, cooking [the] child’s meals, and doing [the] child’s laundry.”

¹⁴³ *Id.* at 57.

children.”¹⁴⁴ Because “socially defined and preexisting parental roles [based on sex] are not readily available” to gay father couples, these couples “undergo . . . deliberation” to “clarify and weigh options” and “negotiate who will do what parenting task and who will assume what parenting role.”¹⁴⁵ As one anecdotal account from a gay father illustrates, “Since [my partner and I] can’t divide the chores according to traditional established gender roles, we get to divide them according to ability and taste. . . . Andy cooks, I clean, we both sing, and we both roughhouse.”¹⁴⁶ The outcome of the negotiation is typically “a more equitable division of tasks and responsibilities”¹⁴⁷ in which the division of tasks tends to be based “according to interests and abilities.”¹⁴⁸ As a result, “gay families show that parenting roles and tasks need not be arranged along traditional gender-differentiated roles.”¹⁴⁹

III. Challenging the Father-Promotion Crusade

As demonstrated in Part II of this Article, the sociological and psychological studies of gay fathers, although limited, suggest that gay fathers tend to disrupt the sex-stereotyped definitions of fathers set forth by many father-promotion crusaders. Gay fathers disrupt expectations that fathers will embrace traditional roles such as being the primary breadwinner and disciplinarian and display traditionally masculine parenting behavior such as emotional distance and assertiveness. By contrast, gay fathers are more likely to engage in “feminine” parenting behaviors such as fostering expressive and emotionally intimate relationships with their children and to

¹⁴⁴ JOHNSON & O’CONNOR, *supra* note 124, at 149.

¹⁴⁵ McPherson, *supra* note 133, at 76.

¹⁴⁶ Maer Roshan, *Parenting: My Two Dads: Dan Savage and Jesse Green—Together with Their Boyfriends—Want You to Know that Fatherhood Isn’t Just for Straight Guys Anymore*, N.Y. MAG., June 12, 2000, available at <http://nymag.com/nymetro/urban/gay/features/3367/>.

¹⁴⁷ McPherson, *supra* note 133, at 76.

¹⁴⁸ JOHNSON & O’CONNOR, *supra* note 124, at 150.

¹⁴⁹ McPherson, *supra* note 133, at 76.

emphasize their parental duty to provide nurturance over their duties to provide discipline or financial support. Furthermore, gay father couples are less likely to divide parenting tasks and roles based on sex differences, preferring instead to allocate them according to each father's talents or interests. As a result, it is also probable that they disrupt the father-promotion crusaders' notion that children should have two parents who are sufficiently complementary to or different from each other such that they can serve as role models of heterosexual relationships and stereotypical gender roles for males and females.

Despite gay fathers' failure to conform to the father-promotion crusaders' sex-stereotyped definitions of fathers, studies show that the children of gay fathers are thriving to the same degree as their peers raised by heterosexual parents. The American Psychological Association, in a comprehensive report reviewing the existing research on lesbian mothers and gay fathers as of 2005, concluded that:

[T]here is no evidence to suggest that lesbian women or gay men are unfit to be parents or that psychosocial development among children of lesbian women or gay men is compromised relative to that among offspring of heterosexual parents. Not a single study has found children of lesbian or gay parents to be disadvantaged in any significant respect relative to children of heterosexual parents. Indeed, the evidence to date suggests that home environments provided by lesbian and gay parents are as likely as those provided by heterosexual parents to support and enable children's psychosocial growth.¹⁵⁰

Although "most research in psychology concludes that there are no differences in developmental outcomes between children raised by lesbigay parents and those raised by heterosexual

¹⁵⁰ AMERICAN PSYCHOLOGICAL ASSOCIATION, LESBIAN AND GAY PARENTING 15 (2005), available at <http://www.apa.org/pi/lgbt/resources/parenting-full.pdf>.

parents,”¹⁵¹ Biblarz and Stacey suggest that some modest differences do exist. Some of those differences, such as “the burdens of vicarious social stigma” faced by children raised by lesbian and gay parents, “are secondary effects of social prejudice” which “should wither away under conditions of full equality and respect for sexual diversity,” while others are “‘just a difference’ of the sort democratic societies should respect and protect.”¹⁵² But the most significant difference—namely that “lesbigay parenting may be associated with a broadening of children’s gender and sexual repertoires”¹⁵³—should be seen as a difference that “favor[s] the children of lesbigay parents.”¹⁵⁴ As Biblarz and Stacey explain, to emphasize that children of lesbian and gay parents “grow up more open to homoerotic relationships” can be politically dangerous “[i]n a homophobic world” in which anti-gay activists will “deploy such [a finding] to deny parents custody of their own children and to fuel backlash movements opposed to gay rights,” but to deny this finding “capitulates to heterosexist ideology and is apt to prove counterproductive in the long run.”¹⁵⁵

Regardless of whether one agrees with Biblarz and Stacey that this characteristic of the children of gay (and lesbian) parents is a positive one, it nevertheless points to a further disruption of the father-promotion crusaders’ definition of a father as one who ensures that his children, and particularly his sons, will develop the traits associated with a conventional gender and heterosexual orientation.

The foregoing evidence suggests that gay fathers are succeeding in meeting the developmental needs of their children such that their children’s “psychosocial growth” is on par with that of children raised by heterosexual parents, even though gay,

¹⁵¹ Timothy J. Biblarz & Judith Stacey, (*How*) *Does the Sexual Orientation of Parents Matter?* 66 AM. SOC. REV. 159, 159 (2001).

¹⁵² *Id.* at 177.

¹⁵³ *Id.* at 172.

¹⁵⁴ *Id.* at 177.

¹⁵⁵ *Id.* at 178.

fathers do not conform to most of the father-promotion crusaders' definitions and expectations of "fathers." This finding raises a serious question about how truly necessary it is for children to have a "father" who fits these definitions in order to have positive developmental outcomes. If the parenting performed by gay fathers largely resembles what has traditionally been understood as "mothering" and their children have not been disadvantaged in any significant respect relative to children of heterosexual parents as a result of this, do children really "need a father"? The answer may well be "no." Particularly if one rejects the father-promotion crusaders' notion that children need a parent who will ensure that they develop the "correct" gender identity and (hetero)sexual orientation, and agrees instead with Biblarz and Stacey's suggestion that the broadening of children's gender and sexual repertoires should be celebrated, it is questionable whether children actually need a "masculine parent," a "parent who performs the roles traditionally associated with fathers," and/or a parent who is "complementary" to or "different" from a mother to experience healthy development. In short, it appears that the research on gay fathers challenges the father-promotion crusaders' fundamental premise (i.e. that "children need a father") by showing that fathers, as the father-promotion crusaders have defined them, may in fact be unnecessary.

The question of whether fathers are unnecessary has been raised before by scholars who have studied single-parent families headed by single mothers. As Nancy Dowd has explained, both popular culture and academics have stigmatized these families in part because it was presumed that families headed by single mothers "were detrimental to children, particularly boys, because of the absence of fathers."¹⁵⁶ This presumption was grounded in the father-promotion crusaders' assertions that children without a father would "suffer due to his absence, in areas such as sex role development, academic performance, and moral development."¹⁵⁷ Dowd refutes this presumption by arguing, first, that assuming fathers are

¹⁵⁶ Nancy E. Dowd, *Stigmatizing Single Parents*, 18 HARV. WOMEN'S L.J. 19, 26 (1995) [hereinafter Dowd, *Stigmatizing Single Parents*].

¹⁵⁷ *Id.* at 35.

necessary to ensure "healthy sex-role identification," especially for boys, "is both archaic and riddled with unjustified gender stereotypes."¹⁵⁸ Second, father absence is not the *cause* of children's negative developmental outcomes such as juvenile delinquency and truancy; rather, "father absence . . . provide[s] a link to the problems faced by single-parent families" because father absence is "a proxy for poverty." It is not father absence *per se* but "the consequences of poverty [which] explain much of the negative behavior of children from single-parent families."¹⁵⁹ Based on this logic, Dowd argues that "the strongest claim [that could be made] for a unique role for fathers is that when fathers strongly support the mother in a full-time parenting role, their presence has significant indirect benefits for children."¹⁶⁰ That is, children benefit from having two parents as opposed to one because the second parent provides additional economic support, but this does not prove that men are essential to healthy child development. Indeed, Dowd suggests that the conclusion to be drawn from her findings is that fathers "are important, but not essential, [and] that their role is not unique, but additive."¹⁶¹

Dowd and other scholars who have studied the economic disadvantages and legal obstacles that single mothers face are interested in the claim that fathers are unnecessary primarily for its potential to challenge patriarchy. As Linda Lacey explains,

¹⁵⁸ *Id.* at 39.

¹⁵⁹ *Id.* Dowd also criticizes the father-promotion crusaders' ideology for assuming a sex-stereotyped script in which "mothers and fathers play[] clear, distinct roles in the family." *Id.* at 35. She argues that "attributes of good parenting are neither sex-specific nor sex-related," and that although the attributes of good parenting are "more strongly associated with traditional and modern views of mothering, . . . the connection is cultural, not biological." *Id.* at 36. Dowd does not discuss gay fathers but it appears that the research on gay fathers bolsters this argument by providing additional evidence that the attributes of good parenting, which are typically defined as "mothering," are not a result of a parent's biological sex.

¹⁶⁰ *Id.* at 36; see also Nancy E. Dowd, *Rethinking Fatherhood*, 48 FLA. L. REV. 523, 531 (1996) [hereinafter Dowd, *Rethinking Fatherhood*] ("Father presence correlates with more income or child support, and sufficient economic resources correlate with greater childhood success.").

¹⁶¹ Dowd, *Stigmatizing Single Parents*, *supra* note 156, at 40.

"defenders of patriarchy" feel "threatened by single motherhood" because it "represents a threat to the most effective means through which men have controlled women," i.e. marriage. Requiring marriage "for all 'respectable' women who wanted children" and then burdening them with the bulk of the childcare responsibilities "resulted in women being economically and emotionally dependent on their husbands." But as "[i]ncreasing societal acceptance of unwed mothers" has begun to "free women from" the choice between "entering into dependent, abusive relationships or giving up having children," single mothers have come to threaten the continued control of the patriarchy over their lives.¹⁶²

In making these arguments, Lacey and Dowd are suggesting that single-parent families headed by single mothers challenge the father-promotion crusaders' premise that "children need a father" where "father" is defined as "a male parent." In the words of Dowd, "[i]f fathers are inessential and/or replaceable, fathers and husbands may fear that if women are not kept dependent, they will not form relationships with *men* or share children with *men* because they will no longer be needed."¹⁶³ Dowd and Lacey expose the fact that underlying the father-promotion crusaders' assertion that "children need a father" is an ideological commitment to maintaining the patriarchy and the continued necessity and centrality of men in women's lives.

Although the research on gay fathers does not lend additional support to the argument that children do not need a male parent, it challenges the father-promotion crusaders' premise that "children need a father" where "father" is taken to mean a masculine parent, a parent who performs roles

¹⁶² Linda J. Lacey, *As American as Parenthood and Apple Pie: Neutered Mothers, Breadwinning Fathers, and Welfare Rhetoric*, 82 CORNELL L. REV. 79, 107-08 (1996) (reviewing MARTHA FINEMAN, *THE NEUTERED MOTHER: THE SEXUAL FAMILY AND OTHER TWENTIETH CENTURY TRAGEDIES* (1995) and DAVID BLANKENHORN, *FATHERLESS AMERICA: CONFRONTING OUR MOST URGENT SOCIAL PROBLEM* (1995)).

¹⁶³ Dowd, *Stigmatizing Single Parents*, *supra* note 156, at 40 (emphasis added).

traditionally associated with fathers,¹⁶⁴ and/or a parent who is complementary to or different from a mother. Taken together, the research on single mothers and gay fathers undermines the father-promotion crusaders' argument that "children need a father" with respect to all four definitions of "father" deployed by the crusaders. That children do not require a father as framed by the father-promotion crusaders does not necessarily mean that children only need mothers, but it does suggest that children will not suffer from having parents who do not conform to the sex-stereotyped parenting roles that, according to the crusaders, fathers ought to fulfill. Indeed, if we accept Biblarz and Stacey's argument that it is to children's benefit to have parents who foster the exploration of a wider range of gender and sexual repertoires, then it may be in children's best interest to have sex-stereotyped role-based parenting dissolved.

Moreover, while the research on single mothers exposes the patriarchal ideology underlying the father-promotion crusaders' claims, the research on gay fathers advances an additional layer of critique by exposing the heteropatriarchal ideology underlying the crusaders' claims. For the father-promotion crusaders, the problem with gay fathers is not merely that they defy sex role stereotypes but also that they are *gay*. As explained in Part I of this Article, the father-promotion crusaders argue that one of the main reasons why children need a father is that they need a parent who is complementary to or different from a mother to illustrate how males and females "relate to each other" and to provide them "with a model of [a] meaningful heterosexual relationship."¹⁶⁵ In addition, sons need a masculine parent to help them develop "appropriately masculine character traits," such as "how to relate acceptably to the opposite sex."¹⁶⁶ Indeed, father-promotion crusaders such as Popenoe have

¹⁶⁴ This is particularly true as to the "primary disciplinarian" role but is also true as to the "primary breadwinner" role in that although adequate financial resources are important in ensuring that children will have positive developmental outcomes, it need not be the case that a parent who provides economic support must see this as his primary parenting role or, in the case of two-parent families, that one parent must assume financial responsibility to a much greater degree than the second parent.

¹⁶⁵ See *supra* notes 66–67 and accompanying text.

¹⁶⁶ See *supra* note 39 and accompanying text.

asserted that fostering heterosexual relationships is of such importance that even within gay parent couples "one partner commonly fills the male-instrumental role while the other fills the female-expressive role,"¹⁶⁷ despite the fact that the sociological research outlined in Part II of this Article overwhelmingly refutes this assertion. Underlying the crusaders' emphasis on encouraging children, particularly boys, to conform to the mandate of compulsory heterosexuality is an ideological commitment to perpetuating heteropatriarchy. Sons need a *heterosexual* father because they need a parent who will instill them with heteromascularity and will teach them the rules of the heteropatriarchy.

Gay fathers challenge the heteromascularity assumptions that underlie the father-promotion crusaders' claim that children need a father. As revealed by the sociological and psychological research, gay fathers are more likely to broaden their children's sexual and gender repertoires and to foster an acceptance of non-heterosexual orientations. Many gay fathers teach "their children at very early ages that their families [are] special and slightly divergent from" the normative two-parent heterosexual family and "expos[e] their children to other diverse families as a strategy to foster their children's understanding of family diversity."¹⁶⁸ By actively engaging in caretaking, equitably sharing and performing domestic tasks, and role modeling expressive traits such as communicativeness and emotional warmth, gay fathers challenge traditional hegemonic masculinity and demonstrate that participating in traditionally "feminine" tasks or displaying traditionally "feminine" traits is acceptable behavior for males and does not have to be seen as threatening to one's masculine identity. In sum, gay fathers challenge the father-promotion crusaders' assumption that boys need fathers to guide them toward developing traditional heterosexual masculinity in order to further the crusaders' implicit goal of perpetuating the heteropatriarchy.

¹⁶⁷ See *supra* note 68 and accompanying text.

¹⁶⁸ Berkowitz, *supra* note 83, at 12; see also BIGNER & BOZETT, *supra* note 80, at 161 (explaining that most children "respond positively" to male parents who "come out" to their children as gay, perhaps in part because "gay fathers tend to teach their children to be accepting of variations in human behavior").

CONCLUSION

At least one team of psychologists has argued that the research on gay fathers shows not only that traditional fathering is unnecessary but also that "neither mothers nor fathers are unique or essential"¹⁶⁹ to "support positive child outcomes."¹⁷⁰ They conclude instead that children just "need at least one responsible, caretaking adult who has a positive emotional connection to them and with whom they have a consistent relationship."¹⁷¹ In concluding thus, these psychologists conceive of a gender-neutral "parent," rather than a "mother" or "father," as being critical for healthy child development. Although the concept of gender-neutral parenting is an ideal toward which we should aspire,¹⁷² at present a "caretaking adult" with a "positive emotional connection" to a child is more likely to be thought of as an adult who is performing "mothering"—not merely "parenting." Gay fathers challenge the notion that only women can or ought to engage in "mothering." If in time more heterosexual fathers also begin to participate to a greater degree in childcare responsibilities and parenting behaviors that have traditionally been associated with mothering, we may eventually see a cultural shift such that this care-giving and emotional

¹⁶⁹ Silverstein & Auerbach, *supra* note 29, at 399.

¹⁷⁰ *Id.* at 397.

¹⁷¹ *Id.* at 397–98.

¹⁷² Gender-neutral parenting is an ideal toward which we should aspire because it can advance efforts to counter "invalid stereotypes of appropriate social roles that particularly disadvantage women," such as the "assumption that women are uniquely capable of, and [therefore] should be primarily responsible for, childcare." See Nancy E. Dowd, *Maternity Leave: Taking Sex Differences into Account*, 54 *FORDHAM L. REV.* 699, 714 (1986). A first step toward achieving this goal could be to "eliminat[c] . . . sex stereotypes . . . in the law by encouraging gender neutrality," such as through the provision of gender-neutral "parental leave," as opposed to "maternity leave," for all employees regardless of gender. Such a "move toward gender neutrality in the law" would suggest "that men can . . . nurture their children as mothers do." This would shift the law away from its "merely biological and economic definition" of fathers that historically has "articulated fatherhood as ownership and children as property, controlled by and responsible to the patriarch," particularly in areas such as "adoption, paternity/legitimation, and divorce law." See Dowd, *Rethinking Fatherhood*, *supra* note 160, at 527.

connectedness to children becomes understood simply as gender-neutral "parenting." Until then, at the risk of reinforcing stereotypes of traditional "mothering," the best we may be able to conclude realistically is that certain aspects of traditional mothering (e.g. consistent caretaking and strong emotional ties) are necessary for positive child outcomes while traditional fathering is not—but that men can perform mothering and that "mothering" may eventually come to be understood as purely "parenting" if and when men and women become equal participants in nurturing and caring for children.

The findings of this Article have important implications for the law. Just as the law has been used to advance the goal of ending sex stereotyping in the workplace, the law can play a part in advancing the goal of eliminating sex stereotyping in parenting. It is beyond the scope of this Article to detail all the ways in which the law could be used toward this end, but removing legal restrictions on gay men's ability to become parents (e.g. lifting bans on gay adoption) and implementing policies that will encourage men to focus less on breadwinning and more on the caretaking aspects of parenting (e.g. offering lengthier, paid, and perhaps mandatory parental leave for fathers) may be areas in which to begin the process of promoting gender-neutral parenting and the elimination of sex-stereotyped parenting roles.