### The Macalester Review

Volume 2 Issue 1 *Fall* 2011

Article 2

2-2-2012

# The Mother-Love Myth: The Effect of the Provider-Nurturer Dichotomy in Custody Cases

Kalie Caetano

Macalester, kcaetano@macalester.edu

Follow this and additional works at: http://digitalcommons.macalester.edu/macreview

Part of the Family Law Commons, Family, Life Course, and Society Commons, Feminist, Gender, and Sexuality Studies Commons, Gender and Sexuality Commons, Politics and Social Change Commons, Sociology of Culture Commons, and the Women Commons

### Recommended Citation

Caetano, Kalie (2012) "The Mother-Love Myth: The Effect of the Provider-Nurturer Dichotomy in Custody Cases," *The Macalester Review*: Vol. 2: Iss. 1, Article 2.

 $A vailable\ at: http://digitalcommons.macalester.edu/macreview/vol2/iss1/2$ 

This Article is brought to you for free and open access by the Digital Commons@Macalester College at Digital Commons@Macalester College. It has been accepted for inclusion in The Macalester Review by an authorized administrator of Digital Commons@Macalester College. For more information, please contact scholarpub@macalester.edu.

# The Mother-Love Myth: The Effect of the Provider-Nurturer Dichotomy in Custody Cases

#### **Abstract:**

This paper is a discursive analysis that evaluates the effect of gender stereotypes relating to parenting roles and how they have influenced custody cases. Specifically it looks at the historically gendered distinction between the provider (typically the father) and the nurturer (typically the mother) and speculates as to how those identities may have initially formed in US society, what changes they have undergone and how these stereotypes still affect family court outcomes in cases of divorce. Particular focus is given to an article appearing in *Working Mother* magazine entitled "Custody Lost," detailing a new trend in custody cases, which allegedly disadvantages breadwinning mothers. Using this article as evidence, the paper concludes the parenting stereotypes of yore continue to frame societal and judicial concepts of the genders and what is expected of each in regard to family life and that failure to comply with such expectations may penalize parents in custody battles.

# The Mother-Love Myth: The Effect of the Provider-Nurturer Dichotomy in Custody Cases

From the dawn of Republican motherhood to the pop culture of the 90s, the superiority of a woman's ability to nurture in relation to a man's was an assumption that faced few challenges in United States history. The dichotomous roles of parenting emerged early, consisting of the father-provider and the mother-nurturer, with the majority of the parenting responsibilities falling incumbent upon the fairer sex. The cultural presumptions surrounding the gendered roles of parenthood have fostered the emergence of a politicized division of tasks and expectations for men and women in regard to their children. The discourse surrounding parenting and parental rights is an arena where gender roles and issues of equity converge and have imperative consequences on the changing structure of the family unit and fundamental impacts on both parents and children. Where these gendered views of parental roles become most visible are in custody cases. This paper seeks to analyze what discourses about parenting have guided and continue to influence the legal approaches toward custody cases and particularly focuses on how gender plays a role on these discourses. As a foundation of the analysis two basic functions of parenting are laid out: first, the emotional support and nurturance of the child and second, the financial support and material provision for the child. Throughout history these two functions have generally been divided in a gendered binary, with mothers assuming the role of the primary caregiver and fathers taking up the breadwinner's torch but contemporary society's recasting of these roles has complicated this traditional discourse.

First, it is necessary to understand how the traditional roles of father-provider and mother-nurturer evolved through cultural perceptions of the importance of each parent's relationship to their child. The role of nurturer, throughout history has been frequently, and quite strictly coded as the mother's role, and with rhetoric entrenching mothers as the emotional centers of the family who formed sacred bonds with their children, a legal preference for mother custody surfaced through the tender years doctrine. This is the focus of the first section of the paper, "The Creation of the Nurturing Mother" which establishes maternal rights to custody in the United States. The second section, "The Emergence of the Working Mother" evaluates how the entrance of women into the workforce was viewed as antithetical to this role and helps to explain why cultural backlash nudged women back into the private sphere to fulfill a parental role that was implicitly believed to be contingent on the domesticity of women. The final section analyzes how the redefinition of mothers as simultaneous providers and nurturers complicates and affects custody battles contemporarily. With vestiges of the old dichotomy lingering in society's collective consciousness, attempts to separate mothers from their children are still confronted with the "how dare you?" mentality entrenched by historical framing of mothers as the most essential emotional supports for their children. Thus the cultural presumption inculcated in the early republic privileging the emotional intimacy of mother and child and all but ignoring any parallel claims of fathers to their children, is creating friction as more fathers start to assume roles as "co-caregivers" and demand equal consideration for custody.

Section 1: The Creation of the Nurturing Mother

The sanctity of motherhood as an honored axiom stretches far back in US history. Since Independence, woman's existential and civic role in the US was defined in terms of motherhood, a belief the constitutional framers imitated in the tradition of the *philosophes* that inspired their revolution. As Linda Kerber asserts in her article, "The Republican Mother," "for Locke, Montesquieu, Rousseau, Kames, women existed only in their roles as mothers and wives." Woman, excluded from political participation, found her civic niche in the confines of home and hearth. Her duty was to foster a moral, patriotic posterity: virtuous sons who would conduct and defend the Republic as men, and obedient daughters who would perpetuate the model as wives and mothers. Her political function became conflated with her domestic role and reverent observance of this role was framed as the founding unit upon which the democracy depended. This was perhaps one of the first impetuses sanctifying the mother-child bond.

Regardless of the Spartan-Mother mentality (as Kerber characterizes it), fathers in the early republic still held the reins in the rare cases of divorce and custody battles. Wives, however revered, still remained the property of their husbands along with the children that resulted from marital unions. The ability to provide for children financially was a facet unique to fathers, and it justified them as "protector[s] of children." Also the right of the father to yield labor from his children in agrarian culture was another factor justifying paternal custody. Even the Talfourd Act of 1839, establishing the tender years

-

<sup>&</sup>lt;sup>1</sup> Kerber, Linda K. "The Republican Mother: Women and the Enlightenment—An American Perspective." *American* Quarterly Vol. 28, No. 2, Special Issue: An American Enlightenment, p. 197. John Hopkins University Press, 1976.

<sup>&</sup>lt;sup>2</sup> McNeely, Cynthia A. "Lagging Behind the Times: Parenthood, Custody, and Gender Bias in the Family Court." Florida State University Law Review, 1998. p. 897.

<sup>&</sup>lt;sup>3</sup> The Talfourd Act of 1839 was an law enacted by British Parliament. It was prompted by the agitation of Caroline Norton, whose husband had denied her access to her children after a falling out. Sir Thomas Talfourd introduced the bill into Parliament in 1838. The bill provided the women against whom adultery had not been proven to have custody of children under the age of seven.

doctrine, initially intended for the children to be returned to the father once the child had matured from their "tender years" (tender years being defined as up to the age of seven). 
Even so, Cynthia McNeely's analysis on child custody asserts that the tender years doctrine was the first legal affirmation in the American judicial consciousness of the belief that mother-nurturers were better equipped to raise children. 
However, this tide of maternal preference—the belief that the emotional bonds fostered by mothers were crucial and more inseparable than the paternal bonds so firmly defined in terms of financial stability—was slow in turning. Even following the début of the tender years doctrine, men's rights to their children still superseded women's for some years, despite rhetoric reifying mother-child relationships as the holiest of ties. For example, Clarina Howard Nichols, in a speech at the second national convention for women's rights delivered twelve years after the Talfourd Act, laments over the state of custody battles:

"Not yet have I exhausted that fountain of wrongs growing out of the alienation of the wife's property rights. It gives to children *criminals* for guardians, at the same time that it severs what God hath joined together—the mother and her child! By the laws of all these United States, the father is in all cases the legal guardian of the child in preference to the mother. . . what is it to sever the relation between mother and child, when that relation is a blessing to both, and to society? . . . I have asked learned judges why the state decrees that the father should retain the children, thus throwing upon the innocent mother the penalty which should fall upon the guilty party only? Say they, 'It is because the father *has the property*; it would not be *just* to burden the mother with the support of his children.' O justice, how art thou perverted! The unrighteous alienation of the wife's earnings made the reason for robbing the suffering mother of all that is left to her of a miserable marriage—her children!" (138-9)<sup>6</sup>

Howard Nichols ascribes women's lack of parental entitlement as being tied with their inability to *provide* for their children (alienation of property rights and earnings)—the father holds the property as well as the means to earn and support the family. In the battle between provider versus nurturer, provider wins.

<sup>&</sup>lt;sup>4</sup> Ibid

<sup>&</sup>lt;sup>5</sup> Ibid

<sup>&</sup>lt;sup>6</sup> Campbell, Karlyn Kohrs. *Man Cannot Speak For Her, Vol.* 2. New York: Greenwood Press, 1989.

Another tactic at play is Howard Nichols' presentation of the mother-child bond as a highly tangible connection unique to mothers. She claims that "God hath joined together" mother and child (making no parallel claims for father and child), and characterizes such separation as a severing. The argument places an emphasis on the heart-wrenching pathos of a woman's mother-love for her children and on the father's side of the ledger, she paraphrases legal authorities to prove that man's claim to his offspring is a financial one, downplaying any sort of emotional bond. This characterization foreruns the logic that mothers, whose role is to provide love and support, have a parental task that is contingent upon daily interaction and physical proximity which is antithetical to loss of custody. Fathers, alternately, charged with the duty of provision, have a role that can be performed remotely. Also noteworthy about this passage is an anecdote Howard Nichols employs to illustrate a case in which a "drunken and licentious father" inherits the only son from a failed marriage, usurping the rights of a much anguished mother. In this anecdote she refers to the child in question once as "a son of tender age" and again as "a tender boy" (emphasis added)—perhaps making allusion to the language of the Talfourd Act's tender years doctrine.

The shifting priority in children's custody was a slow transition, expressed variably through state law. Increasingly, due in part to advances in the early woman's rights movement, mothers started gaining parity in custody cases. Two decades after Howard Nichols' speech Susan B. Anthony says, "In some states . . . there have been laws passed giving to the mother a joint right with the father in the guardianship of the children. But twenty years ago, when our woman's rights movement commenced, by the

<sup>&</sup>lt;sup>7</sup> Ibid

laws of the State of New York, and all the states, the father had the sole custody and control of the children."

The Industrial Revolution, further entrenched the provider-nurturer dichotomy, by splitting the nuclear family and increasingly sending fathers away from the home to earn their bread. While before the economy had been centered around work produced from the home with both men and women working as producers of necessary economic goods, the Industrial Revolution increasingly replaced women's traditional tasks of production with factory systems. The labor of manufacturing textiles, candles, soaps—once essential domestic duties of women—was outsourced to industry, rendering women's domestic duties largely economically obsolete, and reducing their role to that of child-bearer and rearer. Angela Davis argues that, "When manufacturing moved out of the home and into the factory, the ideology of womanhood began to raise the wife and mother as ideals." With only those specific functions of supportive spouse and nurturing mother left to women, those ideals became focal points of women's familial responsibilities. The separation between fathers' and mothers' responsibilities not only grew more spatially explicit, with women being left at home to care for the children, but recalibrated economically. Women were reduced to having little to no economic contribution to the family, with all goods being acquired not through her own production but through purchasing power, a purchasing power which was the exclusive earning of the male breadwinners.

In addition to this re-imagining of the family structure as an economic unit, there also came a transformation within the family bonds. McNeely's analysis asserts that

<sup>&</sup>lt;sup>8</sup> Ibid, p. 307

<sup>&</sup>lt;sup>9</sup> Davis, Angela. "Women, Race and Class." Random House: New York. 1981. p. 32

"while no absolute reason can be pinpointed in the cause of the shift toward an indelible preference for mother-custody, the Industrial Revolution figures prominently in this transformation." However, the solidifying of these redefined parenting roles—roles which reduced a woman's fulfillment to her mothering ability, and which created expectations of men to support the woman's project of maintaining the family played a fundamental role in laying the groundwork that isolated men from nurturing roles, and women from provider roles. Thus, revoking a mother's custody in this climate was tantamount to denying her existential validation, whereas a father might still fulfill his role as an economic supplier without enjoying custody of his children. During this period mothers spent more time with their children at home than fathers had the opportunity to. Thus the emotional bond between mother and child was emphasized while simultaneously the ties between father and child diminished. In future custody cases the courts would take into account which parent spent more quality time with the children as a deciding factor, a criterion which would give women—the diaper-changers, the lunchbox-packers, the soccer-practice-chauffeurs—the upper-hand. Also, with the feminization of the homefront, management of home and hearth elevated and sentimentalized the role of the mother and gradually turned the courts in her favor to the point that after the turn of the 20<sup>th</sup> century, cases awarding fathers custody of children became unusual. 11

The gendered theory of nurturance was solidly standardized and came across through various court cases privileging the inviolable emotional bond between women and children, implicitly unique to mothers. In 1916 the Washington Supreme Court was

<sup>11</sup> Ibid, p. 899

<sup>&</sup>lt;sup>10</sup> McNeely, Cynthia A. "Lagging Behind the Times: Parenthood, Custody, and Gender Bias in the Family Court." Florida State University Law Review. p. 898

of the opinion that "Mother love is a dominant trait in even the weakest of women, and as a general thing surpasses the paternal affection for the common offspring, and moreover, a child needs a mother's care even more than a father's." A justice from the Mississippi Supreme Court wrote that "There is peculiarly no limit to the love and affection of a mother for her child . . . her care and protection of her offspring is more naturally efficient than that of any other person." The rhetoric of women's rights advocates paying homage to the inviolable and sacred love of a mother for her child became imbedded in the law. In the battle of provider versus nurturer, nurturer started winning, though intriguingly, just as the nurturer preference began flourishing, more mothers became wage earners and economic *providers* as well. And in the same year that the North Dakota Supreme Court deems motherhood to be "the most sacred ties of nature," 13 their senator, Porter J. McCumber staked an ardent defense of the sharply defined dichotomy which the Industrial Revolution helped to cement. His speech to the United States Congress during the debate of the Women's Suffrage Amendment in 1918 testifies to the ramifications not only of political parity, but economic equivalency as well:

... I have no fear that womanly character or manly character, which the Lord has been million of years in developing can be changed in any brief period by changes of laws or conditions of life; while I regard as worse than childish the fear that mothers will lose the sentiment of motherhood, the strongest, deepest, holiest tie on earth, will lose that natural instinct which has made it possible for the human family to survive and on which it must ever depend, and will thereby neglect their children or household duties by widening their sphere of activity or increasing their responsibilities; while I believe the real masculine nature will still regard it a privilege as well as a proud duty to provide for and protect, and real feminine nature will still realize its deepest joy as the recipient of that masculine sentiment, my own observation has taught me that common vocation converging and lending the masculine and feminine minds into and along channels of common thought and sentiment, and even common earning capacity, relieve the one from any dependence and the other from the consequential duty which such dependence imposes, the disarrangement of the old plan of provider on the one hand and the home maker on the

12 Ibid

<sup>13</sup> Ibid

other, dulls these sentiments and weakens that magnetic attraction which is the soul of the home. 14

"Manly" and "womanly character" become platonic forms in McCumber's characterization with concrete natures, not constructed, but pre-dating society. There are two fundamental definers of the "real feminine nature" according to McCumber: the "sentiment of motherhood" and the "deepest joy" of being provided for and protected by men. Most intriguing is that McCumber refutes the idea that this first attribute is under any danger, regardless of societal shifts. The argument that women shall be denigrated as mothers by gaining economic independence is, according to the Senator, a "worse than childish" fear. He affirms that particular feminine capacity is too intrinsic, too natural, and indeed, divinely ordained ("the holiest of ties") to be tampered with by external changes. Yet he does prognosticate a breakdown in accountability and familial ties should the tried and true formula of father-provider/mother-nurturer be upset by Rosie the Riveter's progressive agenda.

#### Section 2: The Emergence of the Working Mother

This tug-of-war of women moving into the workforce and public sphere and alternately being nudged back into the home played out poignantly during the first half of the 1900s. The onslaught of World War I exported much of the country's working force to the frontlines of the European stage, creating a vacuum in the labor market which women were encouraged to fill as part of their patriotic duty. Bent on creating the most efficient arsenal of labor possible, the government (specifically the United State

<sup>&</sup>lt;sup>14</sup> McCumber, Porter J. (ND). "Susan B. Anthony Amendment." *Congressional Record*. (September 26, 1918) p. 10774.

Employment Service) launched a campaign that encouraged all male workers to drop "non-essential" jobs and redirect their efforts toward war-related industries. Meanwhile women were encouraged to replace men in those newly opened positions which now fell to the realm of "women's work" (such as "sales clerks and floor walkers . . . clerical, cashier and office staffs . . . the officers of transportation companies and other public utilities, waiters, attendants and many other occupations"). The war got many women a foot in the door of the labor market, and they did not immediately return to the kitchens when the soldiers came home. By 1920 the Department of Labor reported that one in four workers was a woman, and their labors were not only limited to "woman's work." The age of women farmers, doctors, lawyers, real estate agents, bankers and owners of small businesses was dawning. 16 1925 saw the inauguration of the first female state governor. Women were increasingly donning the provider gauntlet, moving not only into factories but into highly-paid and respected professions as well. These shifts were met with resistance.

Responses to the woman-provider phenomenon were met with a two-part carrot-stick retort. The push factor—the argument that elbowed women out of the workforce, especially the realm of industry, asserted that women robbed jobs from the needy and at the expense of their families. One editorial from Dr. Arthur L. Charles, a clergyman in Brookyln, argued that women who "indulge[d] their selfish desire to remain independent,

<sup>&</sup>lt;sup>15</sup> Janeway, Elizabeth. *Women: Their Changing Roles*. The New York Times. "Present Economic Status Of Women: New Opportunities Thrown Open to Them by the War." 6 October 1918. Arno Press. New York. 1973. p. 65.

<sup>&</sup>lt;sup>16</sup> Ibid, "Women workers invade nearly all occupations: There is Scarcely a Line of Endeavor Formerly Restricted to Men in Which Women Are Not Making Good Today—Some Instance of Their Success." 30 November 1922. p. 127.

<sup>&</sup>lt;sup>17</sup> Mrs. Nellie Taylor Ross was elected governor of Wyoming after the former governor, her husband William Ross died after a year and a half in office. Ibid. "First Woman Takes Office As Governor." 6 January 1925. p. 131.

though married," not only displaced laborers that needed the income for subsistence, but also put a strain on their marital life, which ought to be their top priority. His sentiments echoed an earlier complaint from Mrs. Samuel Gompers—wife of the President of the American Federation of Labor. She argued that

Women whose husbands earn a good living should not seek positions in the business world, and thereby furnish an overplus of labor, which will allow employers to use competitive demand for jobs for the purpose of lowering wages of women who are compelled to work.

Then too, the married woman who works without necessity is dividing her interests. A home, no matter how small, is large enough to occupy her mind and time. The home suffers if the wife and mother is in business, and her husband loses something to which a husband is entitled—the whole-hearted interest of his wife. If there are children, it is criminal to leave them to the mercy of the streets.

Both testimonials reify the prejudice against women who labor outside of the domestic sphere. The implication of their arguments assumes as natural the role of woman as a domestic creature unless otherwise compelled out of financial necessity. Notably, when a man works he is not accused of "dividing his interests" between home and work, implying that his interests should not necessarily include the home life at all. For him, the home is a resting place, but not the focal point of his life, as it must be with the wife and mother who is obligated to fulfill her husband's "entitlement" to her "whole-hearted interest."

Earlier in the century, the landmark case *Muller v. Oregon* limiting the amount of hours women could legally work made explicit reference to a woman's distinct disadvantage in balancing her (indispensable) role as mother and her (dispensable) role as provider:

<sup>&</sup>lt;sup>18</sup> Ibid, "Dr. Charles Assails Wives Who Hold Jobs." 7 March 1930. p. 162.

<sup>&</sup>lt;sup>19</sup> Ibid, "Mrs. Gompers Says Married Women Who Work, Not from Necessity, Take Bread from the Needy." 31 August 1921. p. 116.

That woman's physical structure and the performance of maternal functions place her at a disadvantage in the struggle for subsistence is obvious. This is especially true when the burdens of motherhood are upon her. Even when they are not, by abundant testimony of the medical fraternity, continuance for a long time on her feet at work, repeating this from day to day tends to injurious effects upon the body, and, as healthy mothers are essential to vigorous offspring, the physical wellbeing of woman becomes an object of public interest and care in order to preserve the strength and vigor of the race.<sup>20</sup>

Thus, the Supreme Court deemed it an interest of society's propagation of a hardy race of citizens that justified denying to women the full exercise of their ability to establish themselves as providers. This prerogative was allegedly supposed to be reinforced by the natural biological factors that resulted in the inferiority of female physicality in comparison with that of a robust male laborer.

On the other side of the argument—the carrot enticement toward embracing motherhood, society began to construct a rhetoric to lure women seeking to sate an aspiration to a profession by redefining the concept of motherhood and casting it as a profession in and of itself. Domestic work was reincarnated into a scientific inquiry—cooking became women's chemistry and education became concerned with "academicizing" domestic chores. Institutions such as the New York School of Mothercraft taught women in the ways of domestic science, child psychology and home economics. Significantly, there was no New York School of Fathercraft. And tellingly, the census began to classify "home-making" as an occupation in 1930, as opposed to reporting women residing in the domestic sphere as being unemployed. Thus, in defense of the traditional dichotomy of the gendered public and private spheres, cultural rhetoric began to equate male and female familial roles as being dependent on "jobs." Whereas

<sup>&</sup>lt;sup>20</sup> Muller v. Oregon. Cornell University Law School Legal Information Institute. Supreme Court of the United States. 24 February 1908.

<sup>&</sup>lt;sup>21</sup> Janeway, Elizabeth. *Women: Their Changing Roles*. The New York Times. "Training Girl in the Craft of Motherhood." 25 May 1913. Arno Press. New York. 1973. p. 34.

before men were employed, and women were jobless, increasingly being a mother was argued to be a job recognized by governmental authority (the census) and requiring proper training. Through this method, conservative tides sought to content women with the gender division of labor and within the confines of their nurturing niches nestled neatly in the private sphere of the home.

Throughout the twentieth century, men's role as family breadwinners was increasingly reified until their principal responsibility of fatherhood was equivocated with the ability to support and maintain a household and a lifestyle for their families. The father's job as bill-payer was one that required little interface with his actual family to the extent that it could be done remotely. In essence the father's place in the family was exported to the workforce. Meanwhile female identity became so intertwined with the raising of children that the separation of the two was an unnatural event. In order to preserve the woman's role as caregiver, even in the event of divorce (now occurring much more frequently than in Howard Nichols' time) child support and alimony became the father-provider's due compensation. His role as provider increasingly was done remotely, while the job of raising the children was indelibly the mother's—a distinct diversion from the early republic's policy.

The mother preference became a rule of the court, reinforced by psychological studies legitimizing the distinctly special role mothers played in their children's lives.

One study conducted in 1951 by John Bowlby on the effects of absentee mothers on children concluded that "the child's relation to his mother . . . is without doubt in ordinary circumstances, by far his most important relationship." There were no parallel

studies conducted to determine the effects of paternal deprivation, however.<sup>22</sup> Regardless, findings such as these became the guidelines by which courts justified maternal preference.

Yet the tender years doctrine began to be called into doubt. Arguments surfaced that the doctrine was in violation of the fourteenth amendment, denying fathers equal protection under the law by granting unquestioned priority to the mother in the cases of children of tender age. As a response, the courts developed a new litmus test. The judicial mantra transformed into the principle of protecting the "best interests of the child." Yet the transformation was a superficial one. Inevitably, after the construction of "nearly fanatical mythologies" vaunting women as the inherently superior parents, the "best interests" of the child were regarded as being most efficiently ensured by granting custody to mothers. Riding on the coattails of this standard was the "all things being equal" doctrine—an affirmative action logic—that, in cases with equally capable, involved and loving parents, mothers were awarded custody on principle.<sup>23</sup>

By the 1970s Senator McCumber's prophecy about the dissolution of the family unit was realized. Man's ability to support a family on a single income diminished, nudging women into the workplace due both to necessity and the blossoming feminist agenda of economic independence. The shift correlated steadily with an increase in the divorce rate, resulting in many single mothers and giving birth to the trend that plagues the twenty-first century: the deadbeat dad phenomenon. Losing any significant role as caregivers and having lost the distinction as "heads of the household," reduced the cultural importance of, and arguably, emasculated fathers whose custodial rights were

<sup>23</sup> Ibid

<sup>&</sup>lt;sup>22</sup> McNeely, Cynthia A. "Lagging Behind the Times: Parenthood, Custody, and Gender Bias in the Family Court." Florida State University Law Review. p. 902

limited, while their wallets were substituted for their presence at the dinner table. The Mother Myth abounded and fathers' parental rights received relatively much less consideration than mothers'. The cultural anxiety of fathers' grappling with impossible custody battles manifested in 90s pop culture. Comedic blockbusters such as *Liar*, *Liar* (1997), starring Jim Carrey, *The Santa Clause* (1994) with Tim Allen, and *Mrs. Doubtfire* (1993) starring Robin Williams followed the anguished father protagonists who, panic-stricken, pleaded with their level-headed, super-mom ex-wives for reconciliation and visitation rights. The Hollywood endings follow a simple formula: the workaholic father realizes that he has shirked his paternal duties and endeavors to foster better emotional bonds with his children who were neglected in pursuit of a career, thus proving to the exwife that he is a worthy parent. And thus the mentality of the provider-nurturer dichotomy comes full circle: where, initially, custody was awarded to the breadwinner *due* to the ability to financially support his family, breadwinning is contemporarily seen as a hindrance, a stumbling block to quality parenting.

#### Section 3: Dismantling the Gendered Provider/Nurturer Dichotomy

It is in this cultural moment that *Working Mother* magazine publishes an article called "Custody Lost." After more than a century and a half of tender years doctrine<sup>24</sup> Sally Abrahms reports in 2009 on a new trend, disadvantaging *breadwinning* mothers in custody cases. The article's stance is a defensive one, implicitly alleging that women's shirking of their nurturing responsibilities and the donning of the provider mantle is ill-

<sup>&</sup>lt;sup>24</sup> The tender years doctrine was established in by the Talfourd Act of 1839 and has been officially repealed by many states throughout the 1990s.

received by courts. She quotes a Los Angeles-based lawyer who remarks that "a mother's career can be a liability in custody battles," which would help to inspire NPR's summary of the issue: "some wonder whether the statistics suggest that women who work as breadwinners for their families are now being *punished* for it [emphasis added]." The article seems to assert that as the inheritors of the Mother Myth—the belief that woman's end-all-be-all is motherhood—modern woman faces consequences for attempting to disown the legacies of domesticity, and it takes issue.

The protagonist of the article is Julie Michaud, mother and businesswoman supporting her children and unemployed husband, Mark. Julie ultimately loses custody of her children to Mark and is required to pay both child and spousal support. Her case is like many others—2.2 million others to be exact, Abrahms points out—that is the number of mothers who do not have primary custody of their children.

Yet, the instances Abrahms intends to characterize as unjust form obvious parallels to the prejudices fathers faced in custody cases for decades. When describing Julie's husband Mark, he is never referred to as a stay-at-home dad—he is *unemployed*, a non-provider—while it is Julie who is the breadwinner *and* a nurturer. A telling paragraph describes the economic-role tension in the family:

... Julie fought to remain steady against a sudden riptide of emotion ... The anger at her husband for failing to help support them [their children]. "I couldn't work any harder," Julie says. "I begged him to get a job." In court papers, Mark, a graphic artist by training, said he had agreed to stay home with the kids so Julie could build her business.<sup>27</sup>

<sup>&</sup>lt;sup>25</sup> Ibid

<sup>&</sup>lt;sup>26</sup> "Working Mother Sometimes Frowned Upon In Custody Battles." *Tell Me More*. National Public Radio. 17 November 2009. Web. 19 March 2011. Transcript.

<sup>&</sup>lt;sup>27</sup> Abrahms, Sally. "Custody Lost." Working Mother. November 2009.

Ultimately, Julie's career was portrayed as "too demanding," and too substantial of a distraction from her responsibilities at home. Mark's lawyer, however, was able to demonstrate that it was Mark "who arranged playdates, took the kids to the pediatrician and volunteered at their schools" while "affidavits from teachers and neighbors attest to his hands-on involvement in their daily lives."<sup>28</sup> Were Mark a woman, he would likely have been described as a stay-at-home mom, rather than pointedly described as unemployed. Meanwhile, Julie argues that the more nurturing parenting roles she had with her children were less obvious to the greater community, but no less important and that ultimately she was penalized for fulfilling a role that was not "super-visible".

But is cultural backlash against working women the real culprit, as Abrahms implies? The New York Times when reporting on the article asked, "Is it not, in effect, the same presumption—the parent who works harder, parents less—that men have faced for years?"<sup>29</sup> What the *Times* seems to imply is that perhaps this issue is not divided explicitly along gender lines, but rather on economic grounds—grounds which have long been coded in terms of gender, of course. But as those economic roles shift so too do expectations of parental involvement and ideas about custodial merit. Because courts still perceive one parent as being *more* of a caretaker than another, and because this role is held in opposition to the provider role, custody is biased toward whichever parent is seen as the primary nurturer, regardless of gender. Abrahms points out that the number of custody cases fathers win has doubled in the past decade, as they join in the domestic responsibilities of parenthood from "boo-boo"-kissing to arranging play-dates to bringing their kids to pediatric appointments. The "hands-on" parent is increasingly losing

<sup>&</sup>lt;sup>28</sup> Ibid.

<sup>&</sup>lt;sup>29</sup> Belkin, Lisa. "More Fathers Are Getting Custody in Divorce." *The New York Times*. 17 November 2009.

specificity to the mother, "as fathers become more entrenched in their roles as *cocaregiver* [emphasis added]" as seen in the cathartic morals of 90s blockbusters.

However, Abrahms is not sold on the equalized playing field argument. She considers this possibility in her article and refutes it with another case study. Kim Voichescu, a civil engineer turned law student, who pursued custody for her two teenage sons describes how her ex-husband's lawyer characterized the case:

"My ex's attorney questioned my ability to care for my children based on my extensive work schedule," she says. "During the trial, he called into question my *mothering abilities* [emphasis added] and asked, 'How could someone who is so career-oriented be a *nurturing mother* [emphasis added]?""... "We supposedly live in a modern age, and yet I had to justify my nurturing abilities because I have a job?"

In Kim's case the rhetoric is specifically gendered, her role as nurturer defined and its fulfillment demonstrated as having been shirked. Her case is an interesting one in comparison with Julie's. While the entirety of Kim's case was contingent upon justifying why she, the "nurturing mother" *does* work and provide for her family, Mark's case was dependent upon justifying why he, the male provider, *did not* support his family. Thus this increasingly problematic and steadily more obsolete provider-nurturer binary still haunts modern court cases. Fathers and mothers are still at some level beholden to these stereotypes of parenting that are not only highly reductive but also fundamentally unfair. The outdated gendered expectations of parenting prevail even to this day.

Revision of basic familial assumptions and the fundamental discourse that guide custody battles is necessary. Judges and attorneys are still operating under antiquated dichotomies that hold little water in a modern context, where many mothers have jobs outside of the home and fathers ought to have a greater sense of their role than a purely

<sup>30</sup> Ibid

economic one. Such paternal low-esteem may have something to do with increased rates of paternal disconnectivity from the family and the prevalence of single mothers. When mothers are ascribed with inherent capacities for nurturance and also granted the freedom to economic self-sufficiency, a familial model that defines a father as an economic provider with little other supplementary expectations of him renders his role redundant and unessential. The Mother Myth that has historically limited women's options by asserting that motherhood was a woman's sole purpose and that she was naturally more endowed for nurturing children than her male counterparts has conversely defined fathers as a complement to that structure, rather than an integral part of it. Dismantling the myth, and by extension the typically gendered divisions of provider/nurturer is an essential step to a more equitable understanding of men and women operate as parents and more fair-minded protocol for determining custody cases that do not require parents to be held accountable to archaic standards.

.

## Bibliography

- Abrahms, Sally. "Custody Lost." Working Mother. November 2009.
- Belkin, Lisa. "More Fathers are Getting Custody in Divorce." *The New York Times.* 17 November 2009.
- Campbell, Karlyn Kohrs. *Man Cannot Speak For Her, Vol. 2.* New York: Greenwood Press, 1989.
- Davis, Angela. "Women, Race and Class." Random House Inc.: New York. 1981.
- Janeway, Elizabeth. Women: Their Changing Roles. The New York Times. Arno Press: New York. 1973
- Kerber, Linda K. "The Republican Mother: Women and the Enlightenment—An American Perspective." *American Quarterly* Vol. 28, No. 2, Special Issue: An American Enlightenment. John Hopkins University Press, 1976.
- McCumber, Porter J. (ND). "Susan B. Anthony Amendment." *Congressional Record. (September 26, 1918)* p. 10774.
- McNeely, Cynthia A. "Lagging Behind the Times: Parenthood, Custody, and Gender Bias in the Family Court." Florida State University Law Review, 1998.
- Muller vs. Oregon. Cornell University Law School Legal Information Institute. Supreme Court of the United States. 24 February 1908.
- "Working Mother Sometimes Frowned Upon In Custody Battles." *Tell Me More*. National Public Radio. 17 November 2009.