

# SPERM, TESTOSTERONE, MASCULINITIES AND FATHERHOOD

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Two intriguing stories hit the news within days of each other in the fall of 2011: one about sperm, one about testosterone. Both separate men from fatherhood, and suggest manhood and fatherhood are at odds. *One Sperm Donor, 150 Offspring* told of a sperm donor who provided information to a website that collects information about children conceived by sperm or egg donation. This donor had assisted in conceiving 150 children (and there was no indication that this was the final count of children from this donor).<sup>1</sup> The story generated a debate over the question of whether the United States should regulate sperm donation (including the number of children that could be conceived with the same sperm donor) more rigorously, similar to practices in other countries.<sup>2</sup> Opinions were solicited from the private sperm donor industry, from legal and medical academics, from a child born from sperm donation, and from other interested parties.<sup>3</sup> Missing from this debate was anyone identified as a sperm donor or an infertile man, or anyone associated with fatherhood research or advocacy organizations.

The second story, in the *New York Times*, just a few days later also boasted an eye-catching headline: *In Study, Fatherhood Leads to Drop in Testosterone*.<sup>4</sup> The story detailed a study that measured men's testosterone levels when men became fathers and when they engaged significantly in the daily care of their children.<sup>5</sup> Men's level of testosterone drops significantly when they nurture their children, according to the study. "If the sound of becoming Mr. Mom is emasculating, that's because it, in fact, is,"<sup>6</sup> declared the opening line of a blog devoted to men's issues that also reported the study. The position of most stories about the study cast it as evidencing a conflict between manhood

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<sup>1</sup> Jacqueline Mroz, *From One Sperm Donor, 150 Children*, N.Y. TIMES, Sept. 6, 2011, at D1.

<sup>2</sup> See, e.g., *Making Laws About Making Babies*, N.Y. TIMES: ROOM FOR DEBATE (Sept. 13, 2011), <http://www.nytimes.com/roomfordebate/2011/09/13/making-laws-about-making-babies?ref=health> (various authors discussing the implications of legal regulation of the fertility industry).

<sup>3</sup> See *id.*

<sup>4</sup> See Pam Belluck, *In Study, Fatherhood Leads to Drop in Testosterone*, N.Y. TIMES (Sept. 12, 2011), <http://www.nytimes.com/2011/09/13/health/research/13testosterone.html>.

<sup>5</sup> See *id.*

<sup>6</sup> Dave Golokhov, *Fatherhood and Testosterone: Scientific Fact: Kids Make You Less Manly*, ASKMEN, [http://www.askmen.com/sports/health\\_500/515\\_fatherhood-and-testosterone.html](http://www.askmen.com/sports/health_500/515_fatherhood-and-testosterone.html) (last visited Mar. 8, 2013) (coupled with a picture of soccer star David Beckham with two of his children).

and fatherhood, although the study also supports the conclusion that men's hormones function as a biological support system for caregiving.<sup>7</sup>

Both of these stories raise interesting questions about the relationship between fatherhood and masculinities. In this Essay, I analyze these two stories from the perspective of masculinities analysis as well as consider how they relate to the project of achieving more engaged, egalitarian fatherhood.<sup>8</sup> My goal is to suggest the kind of analysis that we must persistently engage in to expose the functioning of masculinities as well as to point to ways in which law and policy can support egalitarian norms and social justice. I argue that we must engage in cultural change in the form of a public health approach to reimagining and re-envisioning fatherhood, in addition to providing better structural support.

#### A. MASCULINITIES ANALYSIS AND FATHERHOOD ANALYSIS

Masculinities analysis extends the critical perspectives of feminist theory, critical race theory, and queer theory into the domain of men.<sup>9</sup> It asks the "man question." This draws on the spirit of Mari Matsuda's exhortation that we "ask the other question" when we engage in analyses of inequality and oppression<sup>10</sup> and Angela Harris' foundational model of interrogating masculinities where many saw race as the critical question and explanatory framework in the context of police brutality against a Haitian man in detention.<sup>11</sup> Asking the man question treats men as gendered subjects and masculinities as plural, reflecting multidimensionality. It considers not only men's privilege but also their subordination, as well as the interconnection between privilege and subordination.<sup>12</sup> Masculinities analysis should be a focus not only where it might be obvious but also where we have tended not to see it at all. So, for example, not only is it

<sup>7</sup> See *infra* notes 53–82 and accompanying text for discussion of stories on the testosterone study.

<sup>8</sup> See, e.g., Nancy E. Dowd, *Fatherhood and Equality: Reconfiguring Masculinities*, 45 SUFFOLK U. L. REV. 1047, 1048 (2012) [hereinafter Dowd, *Fatherhood and Equality*]; see also NANCY E. DOWD, REDEFINING FATHERHOOD (2000) [hereinafter DOWD, REDEFINING FATHERHOOD]. Although I refer to the literature about male infertility, sperm donors, and testosterone, this Essay does not purport to present an exhaustive review of that literature.

<sup>9</sup> See NANCY E. DOWD, THE MAN QUESTION: MALE SUBORDINATION AND PRIVILEGE, 3–5 (2010) [hereinafter DOWD, THE MAN QUESTION]; see also Nancy E. Dowd, *Masculinities and Feminist Legal Theory*, 23 WIS. J.L. GENDER & SOC'Y 201, 206 (2008); Nancy E. Dowd, *Asking the Man Question: Masculinities Analysis and Feminist Theory*, 33 HARV. J.L. & GENDER 415, 416–18 (2010); see also *Introduction to MASCULINITIES AND THE LAW: A MULTIDIMENSIONAL APPROACH* 1, 2 (Frank Rudy Cooper & Ann C. McGinley eds., 2012).

<sup>10</sup> Mari J. Matsuda, *Beside My Sister, Facing My Enemy: Legal Theory Out of Coalition*, 43 STAN. L. REV. 1183, 1189 (1991) ("The way I try to understand the interconnection of all forms of subordination is through a method I call 'ask the other question.' When I see something that looks racist, I ask, 'Where is the patriarchy in this?' When I see something that looks sexist, I ask, 'Where is the heterosexism in this?' When I see something that looks homophobic, I ask, 'Where are the class interests in this?' Working in coalition forces us to look for both the obvious and non-obvious relationships of domination, helping us to realize that no form of subordination ever stands alone.").

<sup>11</sup> See Angela P. Harris, *Gender, Violence, Race, and Criminal Justice*, 52 STAN. L. REV. 777, 778–80 (2000).

<sup>12</sup> See DOWD, THE MAN QUESTION, *supra* note 9, at 3–4.

relevant when considering the code of conduct at an all-male school or the defining of gender identity, but also in circumstances where we might see race, class, or sexual orientation as relevant, but either see gender as meaning a focus on women (such as sexual harassment issues) or not see gender at all (such as debates over juvenile justice).<sup>13</sup>

Based on the research of masculinities scholars, I have suggested in previous work that this triggers a series of questions to explore the overarching man question<sup>14</sup>:

- How are men and/or masculinities constructed?
- How is hegemonic masculinity reinforced or challenged?
- Is this an all-male or predominantly male setting (or a mixed-gender setting)?
- How does this expose privilege? Subordination?

The first question assumes that masculinities are, at the core, socially constructed, although multiple, and that this social and cultural model is powerful and limiting. The emphasis on multiple masculinities reminds us that not all men are the same, and not all masculinities are the same. We must consciously look for the range of masculinities in order to not unconsciously reinforce a single masculinity. The second question, however, does ask us to identify how the dominant model of masculinity, hegemonic masculinity, is constructed. The work of masculinities scholars suggests hegemonic masculinity acts as a strong boundary for all masculinities, or at least as a reference point. The third question posits that it is critical to the analysis to be aware of whether the context is exclusively or predominantly male, gender integrated (formally only or actually egalitarian), or female dominated. Ironically, it is often in the male-exclusive or male-predominant contexts that masculinities is most ignored and strangely

<sup>13</sup> For a sampling of the rich scholarship on masculinity outside of legal scholarship, see generally R.W. CONNELL, GENDER (2002); R.W. CONNELL, MASCULINITIES (2d ed. 2005); THE GENDERED SOCIETY READER (Michael S. Kimmel & Amy Aronson eds., 3d ed. 2008); MEN'S LIVES (Michael S. Kimmel & Michael A. Messner eds., 9th ed. 2013); JOSEPH H. PLECK, THE MYTH OF MASCULINITY (1981); THEORIZING MASCULINITIES (Harry Brod & Michael Kaufman eds., 1994); Michael Bach, *Uncovering the Institutionalized Masculine: Notes for a Sociology of Masculinity*, in MEN AND MASCULINITIES: A CRITICAL ANTHOLOGY 37, 41 (Tony Haddad ed., 1993); Scott Coltrane, *Theorizing Masculinities in Contemporary Social Science*, in THEORIZING MASCULINITIES, *supra*, at 39, 44–57; R.W. Connell & James W. Messerschmidt, *Hegemonic Masculinity: Rethinking the Concept*, 19 GENDER & SOC'Y 829 (2005); R.W. Connell, *The History of Masculinity*, in THE MASCULINITY STUDIES READER 245, 245–61 (Rachel Adams & David Savran eds., 2002); R.W. Connell, Jeff Hearn & Michael S. Kimmel, *Introduction* to HANDBOOK OF STUDIES ON MEN & MASCULINITIES 1, 1–4 (Michael S. Kimmel, Jeff Hearn & R.W. Connell eds., 2005); Jeff Hearn & David H.J. Morgan, *Men, Masculinities and Social Theory*, in MEN, MASCULINITIES & SOCIAL THEORY 1, 1–20 (Jeff Hearn & David H.J. Morgan eds., 1990); Jeff Hearn, *From Hegemonic Masculinity to the Hegemony of Men*, 5 FEMINIST THEORY 49, 55 (2004); Michael Kimmel, *Forward* to MASCULINITY STUDIES & FEMINIST THEORY ix, ix–xi (Judith Kegan Gardiner ed., 2002); Michael S. Kimmel, *Masculinity as Homophobia: Fear, Shame, and Silence in the Construction of Gender Identity*, in THEORIZING MASCULINITIES, *supra*, at 119, 119–41 [hereinafter Kimmel, *Masculinity as Homophobia*]; Michael S. Kimmel & Michael Kaufman, *Weekend Warriors: The New Men's Movement*, in THEORIZING MASCULINITIES, *supra*, at 259, 259–88; Stephen M. Whitehead & Frank J. Barrett, *The Sociology of Masculinity*, in THE MASCULINITIES READER 1, 15 (Stephen M. Whitehead & Frank J. Barrett eds., 2001).

<sup>14</sup> DOWD, THE MAN QUESTION, *supra* note 9, at 10.

rendered invisible. In addition, masculinities scholars remind us that the relationships *among* men are as, or more, critical to the reinforcement of hierarchy and privilege within constructions of masculinities.<sup>15</sup> So, male-only categories or contexts may function in unique ways. Finally, the analysis should consider both privilege and subordination and whether they are interrelated. It is not uncommon to find that privilege comes at a price. It is also critical to expose subordination.

I have suggested that we might focus on particular areas of masculinities with respect to fatherhood. We operate from a context of an asymmetric norm of parenting and childcare for fathers as compared to mothers despite a cultural shift toward a new fatherhood norm of engaged care.<sup>16</sup> I have argued that masculinities are at the root of the slow pace of change toward an egalitarian norm of parenting in addition to the lack of structural supports for fathers. In particular, three aspects of masculinities act as barriers to care: the male breadwinner norm; the aversion to doing things associated with girls or women, including care; and the hierarchical norm of masculinity and its correlation with a lack of collaborative care.<sup>17</sup> In order to change fathers, we must change men. In order to achieve a more egalitarian fatherhood, a more engaged fatherhood, we must be attentive to cultural change in our expectations and vision of fatherhood.<sup>18</sup> I have called for challenging policies and laws to actively dismantle these cultural barriers and affirmatively support a strong norm of father nurture and collaborative, egalitarian fatherhood.

The stories about sperm donors and testosterone can be analyzed, then, both from the framework of asking the man question and from the particular masculinities barriers that block engaged, nurturing fatherhood.

#### B. MAKING BABIES: SPERM DONORS, INFERTILE MEN, AND FATHERHOOD

Sperm donors are a completely male category but, when considered in the context of making babies, may include the involvement of both men and

<sup>15</sup> See, e.g., Joan Acker, *Hierarchies, Jobs, Bodies: A Theory of Gendered Organizations*, in THE GENDERED SOCIETY READER, *supra* note 13, at 105, 105–17; Kimmel, *Masculinity as Homophobia*, *supra* note 13, at 119, 119–41.

<sup>16</sup> See Dowd, *Fatherhood and Equality*, *supra* note 8, at 1049. On the one hand, fathers are less engaged with their children as a group, based on census statistics. See Sandra L. Hofferth et al., *Family Structure and Men's Motivation for Parenthood in the United States*, in HANDBOOK OF FATHER INVOLVEMENT: MULTIDISCIPLINARY PERSPECTIVES 57, 68 (Natasha J. Cabrera & Catherine S. Tamis-LeMonda eds., 2d ed. 2013). At the same time, the norm of father involvement for new fathers has significantly shifted the extent of some men's involvement with their children. Jennifer L. Hook, *Care in Context: Men's Unpaid Work in 20 Countries, 1965–2003*, 71 AM. SOC. REV. 639, 649 (2006).

<sup>17</sup> Dowd, *Fatherhood and Equality*, *supra* note 8, at 1049–50.

<sup>18</sup> *Id.* at 1049. This is not an issue unique to the U.S. See generally MAKING MEN INTO FATHERS: MEN, MASCULINITIES AND THE SOCIAL POLITICS OF FATHERHOOD (Barbara Hobson ed., 2002); see also Barbara Hobson & David Morgan, *Introduction to MAKING MEN INTO FATHERS: MEN, MASCULINITIES AND THE SOCIAL POLITICS OF FATHERHOOD*, *supra*, at 1, 1–3; Hook, *supra* note 16, at 639; see also INST. OF EDUC. UNIV. OF LONDON, INT'L REVIEW OF LEAVE POLICIES & RELATED RESEARCH 2010, at 4 (Peter Moss ed., 2010), *available* at [http://www.leavenetwork.org/fileadmin/Leavenetwork/Annual\\_reviews/2010\\_annual\\_review.pdf](http://www.leavenetwork.org/fileadmin/Leavenetwork/Annual_reviews/2010_annual_review.pdf).

women. Configurations might include the donor and a heterosexual couple; the donor and a single man with a surrogate; three men, including the donor and a gay male couple with a surrogate; the donor and a single woman; or the donor and a lesbian couple. The range of contexts reflects an expanded sense of family and parenthood that indicates movement away from a traditional patriarchal, marital norm. Although sperm donation may have begun in the context of heterosexual marital couples, it appears that it has not remained there.<sup>19</sup>

How are men and masculinities constructed within this more complex context? If we begin with sperm donors, language separates men from their sperm and any responsibility as fathers. By operation of law, sperm collected and used to create children under statutory structures disconnects biological fathers from legal fatherhood.<sup>20</sup> Sperm is treated the same as any other body fluid, organ, or other body part that can be useful to another person. This might be viewed as empowering men to make decisions about their bodies and to use them as they see fit, or as disengagement from the unique qualities of sperm's reproductive potential.

Although the language is the language of gift, the reality is that "legal" donors, those who fall within the statutory framework and therefore cannot be legal fathers, are typically selling sperm.<sup>21</sup> The framework for the legal treatment of sperm donors is focused on the parent or parents who want to create children but need a sperm donor to make that possible. Very similar to adoption, the dominant focus is upon the intended parent or parents.<sup>22</sup> Our construction of parenthood frames this as a status with one mother and one father or, at most, two parents (even if of the same gender).<sup>23</sup> The sperm donor statutes do not construct the male donor as a parent and protect the intended parents as the sole parents.

Sperm is treated in this framework as a commodity. In one sense, it is not highly valued because it is easy to give and there is lots of it. The typical payment to sperm donors is \$60–\$75,<sup>24</sup> while egg donors are typically not to be paid more than \$5,000.<sup>25</sup> A vial of sperm is typically sold for several-hundred

<sup>19</sup> NAOMI CAHN, *THE NEW KINSHIP: CONSTRUCTING DONOR-CONCEIVED FAMILIES* 2, 19 (2013). As Cahn points out, given new technology that assists many infertile men, the most common use of sperm donors is by single women and lesbian couples.

<sup>20</sup> For example, the relevant Florida statute states:

The donor of any egg, sperm, or preembryo, other than the commissioning couple or a father who has executed a preplanned adoption agreement under s. 63.212, shall relinquish all maternal or paternal rights and obligations with respect to the donation or the resulting children. Only reasonable compensation directly related to the donation of eggs, sperm, and preembryos shall be permitted.

FLA. STAT. § 742.14 (2012).

<sup>21</sup> CAHN, *supra* note 19, 7–8 (discussion of the word "donor").

<sup>22</sup> For a fascinating comparison of the two, see *id.* at 107.

<sup>23</sup> On the two parent norm, see Melanie B. Jacobs, *Why Just Two? Disaggregating Traditional Parental Rights and Responsibilities to Recognize Multiple Parents*, 9 J.L. & FAM. STUD. 309, 309–10 (2007).

<sup>24</sup> *Egg Donor Compensation. So, How Much Should Egg Donors Get Paid? Part III*, IN VIA FERTILITY BLOG, <http://www.inviafertility.com/blog/egg-donation/drvkarande/egg-donor-compensation-so-how-much-should-egg-donors-get-paid-part-iii> (last visited Mar. 8, 2013).

<sup>25</sup> See CAHN, *supra* note 19, 40–41 (on the recommendations for appropriate compensation by the American Society for Reproductive Medicine, which linked the differential amount to

dollars; eggs, several-thousand.<sup>26</sup> To be sure, there are differences in the process of providing sperm and eggs that are a basis for this difference, as well as the ease of collecting a significant number of sperm compared to the relatively small number of eggs that can be surgically removed. How sexuality focuses in this valuation is not clear; that is, that men provide sperm by masturbating whereas women provide eggs by submitting to surgery.

On the other hand, sperm might be characterized as “invaluable,” because it confers the potential for life, and the potential for parenthood, which is arguably priceless. At the same time, the current process requires the person who is donating sperm to give up their connection and opportunity to nurture potential children who might be born. There is no history of providing extensive counseling to sperm donors. We either assume, or simply construct, the act of being a sperm donor as not meaning much, or as an act of virility or selfless contribution, but not as an act that might be expected to generate a sense of loss, grief, or even curiosity or desire to connect. Research indicates that sperm donors are treated differently from egg donors and not in ways that reflect the differences in obtaining gametes.<sup>27</sup> This suggests that we differentiate the meaning of motherhood and fatherhood and the meaning of donating gametes in a way that minimizes the meaning of fatherhood.<sup>28</sup>

Sperm donation also commonly is anonymous and private. It thereby reinforces men’s separation from children as well as a devaluing of (or more accurately, denying) their connection. It reinforces the primacy of the intended parents’ position and bars children from connections to the donor. This disconnection is notable in comparison to efforts to connect biological fathers to their children in other settings, most notably child support, concerns over the disconnection of many men from their children, and their asymmetric nurturing pattern.<sup>29</sup> Although some might argue that sperm donation is different, one might

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the time spent in a medical setting, one hour for men to donate sperm, fifty-six hours for women to donate eggs, arriving at a suggested figure of \$3,360–\$4,200).

<sup>26</sup> *Id.* at 14.

<sup>27</sup> *See id.* at 40.

<sup>28</sup> Rene Almeling has done an exhaustive study on the gendered practices of providing sperm versus eggs. *See generally* RENE ALMELING, *SEX CELLS: THE MEDICAL MARKET FOR EGGS AND SPERM* (2011). Her findings include the discovery that women are treated as making a gift, while men see this as work for which they are paid wages. *Id.* at 112. Women do not see themselves as mothers to the children born but men, ironically, did see themselves as fathers (but not as having a right or obligation to father the children in the sense of nurture). *See id.* at 145, 149. The motivation for being a donor is usually a combination of monetary factors and helping couples with fertility problems. *Id.* at 113.

<sup>29</sup> Quite a bit of scholarship exists on men and child support. *See, e.g.,* Kathryn Edin, Laura Tach & Ronald Mincy, *Claiming Fatherhood: Race and the Dynamics of Paternal Involvement Among Unmarried Men*, 621 *ANNALS AM. ACAD. POL. & SOC. SCI.* 149, 152, 154 (2009); Maureen R. Waller, *Viewing Low-Income Fathers’ Ties to Families Through a Cultural Lens: Insights for Research and Policy*, 629 *ANNALS AM. ACAD. POL. & SOC. SCI.* 102, 102–04, 108 (2010); Maureen R. Waller, *Family Man in the Other America: New Opportunities, Motivations, and Supports for Paternal Caregiving*, 624 *ANNALS AM. ACAD. POL. & SOC. SCI.* 156, 164, 168, 171–73 (2009). Significant scholarship also exists on men and caregiving patterns. *See, e.g.,* Dowd, *Fatherhood and Equality*, *supra* note 8; *see also* SARAH ALLEN & KERRY DALY, *FATHER INVOLVEMENT RESEARCH ALLIANCE, THE EFFECTS OF FATHER INVOLVEMENT: AN UPDATED RESEARCH SUMMARY OF THE EVIDENCE* 1, 14, 22–23 (May 2007), [http://fira.ca/cms/documents/29/Effects\\_of\\_Father\\_Involvement.pdf](http://fira.ca/cms/documents/29/Effects_of_Father_Involvement.pdf). On

also contend that it is not a long leap from what is constructed as sperm donation and a one-night stand or a casual relationship that results in the conception of a child.

Bound up in how we construct sperm donors are the men who benefit from this donation to become fathers. Male infertility is inextricably intertwined with the construction of masculinities and fatherhood for infertile men. From this perspective, sperm donation supports social fatherhood.<sup>30</sup> We might, then, construct sperm donation as an unselfish donation or gift, as an example of horizontal, egalitarian giving between men, undermining male hierarchy. Yet the construction of sperm donation suggests to the contrary for several reasons. First, if infertility continues to be a mark of shame, then this is not a relationship of equals. Research into male infertility suggests it is experienced differently and more intensely than female infertility because it challenges men's sense of identity, manliness, and masculinity.<sup>31</sup> Not being a father is unremarkable; not being able to father, in the sense of creation of a child, is shameful. Sperm donation, if the donor is carefully chosen, allows infertility to be hid-

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the disconnection of men from their children, see Cynthia R. Mabry, *Disappearing Acts: Encouraging Fathers to Reappear for Their Children*, 7 J.L. & FAM. STUD. 111, 114–15 (2005); Solangel Maldonado, *Beyond Economic Fatherhood: Encouraging Divorced Fathers to Parent*, 153 U. PA. L. REV. 921, 929–30 (2005). For a comparison of unmarried and divorced fathers, see generally Glendessa M. Insabella, Tamra Willams & Marsha Kline Pruett, *Individual and Coparenting Differences Between Divorcing and Unmarried Fathers: Implications for Family Court Services*, 41 FAM. CT. REV. 290, 291–93, 297–99 (2003).

<sup>30</sup> By social fatherhood, I mean fatherhood defined by actual nurture, not biology, marital status, or financial support. See generally DOWD, REDEFINING FATHERHOOD, supra note 8. For a comprehensive treatment of fathers and how we might support them, see generally THE ROLE OF THE FATHER IN CHILD DEVELOPMENT (Michael E. Lamb ed., 5th ed. 2010).

<sup>31</sup> Professor Naomi Cahn writes:

From the outset, the decision to use donor sperm or eggs may cause recipient parents anxiety and insecurity about their status as parent(s), thereby leading to further insecurities about the consequences of learning the identity of the donor. The use of donor sperm may be particularly difficult for a man. Indeed, cultural beliefs may reinforce the association of masculinity with contributing the sperm that leads to a child, while femininity may be associated with pregnancy, rather than contributing the egg. While heterosexual couples are open to the possibility of donor eggs or sperm, both men and women are significantly more negative towards the use of donor sperm than eggs. When Charis Thompson, a sociologist at the University of California-Berkeley, analysed the world of infertility, she found that men with male factor infertility (with insufficient or inadequate sperm for reproduction) felt significantly more stigma than men whose partners were infertile. Gendered societal norms reinforce the identification of men with their genetic contribution to reproduction so strongly that it becomes related to ego, sexual performance and even a loss of manhood. Moreover, the stigma of infertility for men reflects not just their lack of virility but also their inability to have a child to whom they are genetically connected. Some men may, as Danish anthropologist Tine Jørnhøj-Thomsen observed, worry that the use of donor sperm would lead to difficulties in their bonding with a child to whom they were not genetically related, as well as concern about what would happen to the father-child relationship if the child knew of her origins.

Naomi Cahn, *Legal Parent Versus Biological Parent: The Impact of Disclosure*, 19 J.L. & MED. 790, 790–802 (2012) (citations omitted). See also Tine Jørnhøj-Thomsen, "It's a Bit Unmanly in a Way": Men and Infertility in Denmark, in RECONCEIVING THE SECOND SEX: MEN, MASCULINITY, AND REPRODUCTION 226, 226 (Marcia C. Inhorn et al. eds., 2009) (noting that men's infertility and its personal and social consequences is understudied on a global level).

den.<sup>32</sup> This seems bound up in some of our deepest cultural scripts about having children and gender-specific roles. Research shows that sperm donors viewed themselves as “fathers,”<sup>33</sup> a designation that seems strangely counterintuitive given how sperm donation is treated. As Naomi Cahn suggests, however, this may reflect the erasure of the intended father.<sup>34</sup>

Second, although there is more support of social fathering (of actual nurture) than in the past, and nurture is what matters to children, that support does not extend to multiple fathers.<sup>35</sup> The promise of sperm donation is that it supports a model of nurturing, caring fatherhood. But it seems to require a clear demarcation of one man as the father, and that the biological and social fathers remain unknown to each other.<sup>36</sup> This reinforces hierarchy, not collaboration. Data from the world of Assisted Reproductive Technology (ART) suggests that this is important both to the men who provide sperm and to the infertile men who benefit from sperm donation.<sup>37</sup> When sperm is regulated in a way that requires identification and permits children to obtain some information about their donors, the rate of sperm donation drops precipitously.<sup>38</sup> The studies also indicate that, as between anonymous and known donors, men prefer anonymous donors.<sup>39</sup> Both of these patterns suggest the intensity of the hierarchical orientation of masculinities. It is incomprehensible in this construction of fatherhood and manhood that either man would be comfortable with knowledge

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<sup>32</sup> In contrast to an emerging norm of openness about adoption, such a norm does not exist for donor children. But also note that historically adoption also matched to give the appearance of biological parenthood, and race matching continues to be a controversial issue. Compare Elizabeth Bartholet, *Where Do Black Children Belong? The Politics of Race Matching in Adoption*, 139 U. PA. L. REV. 1163, 1185 (1991) (arguing that race-based decision-making in adoption placement negatively impacts minority children), with Twila L. Perry, *The Transracial Adoption Controversy: An Analysis of Discourse and Subordination*, 21 N.Y.U. REV. L. & SOC. CHANGE 33, 39 (1993–94) (voicing strong support for the “placement of Black children with Black adoptive parents whenever feasible.”).

<sup>33</sup> ALMELING, *supra* note 28, at 145.

<sup>34</sup> E-mail from Professor Naomi Cahn, John Theodore Fey Research Professor of Law at the George Washington Univ. Law Sch., to Nancy E. Dowd, Professor of Law at Levin Coll. of Law, Univ. of Fla. (Nov. 22, 2011, 7:11 AM) (on file with author).

<sup>35</sup> On the lack of support for multiple parents, see Jacobs, *supra* note 23, at 309–10.

<sup>36</sup> The historic importance of children for family wealth and continuity is reinforced—a history of treating children as property, as valuable commodities—thus the connection must be clear and “issue” must happen. See Lee-ford Tritt, *Sperms and Estates: An Unadulterated Functionally Based Approach to Parent-Child Property Succession*, 62 SMU L. REV. 367, 369, 378–82 (2009).

<sup>37</sup> CAHN, *supra* note 19, at 13–30.

<sup>38</sup> In the United Kingdom, legislation enacted in 2005 ended donor anonymity (children at age eighteen could identify their donor). *Sperm Donor Anonymity Ends*, BBC NEWS (Mar. 31, 2005, 11:03 PM), <http://news.bbc.co.uk/2/hi/health/4397249.stm>. Concerns that this would limit donors proved to be true, as the number of donors plummeted. Emily Cook, *Childless Couples Hit by Shortage of Sperm Donors*, DAILY MAIL (LONDON), July 31, 2006, at 32.

<sup>39</sup> Cahn, *supra* note 31, at 793 (“[Nonetheless] when asked to choose between an anonymous and an identity-release donor, men who experienced high levels of stress with their own infertility were much more likely to choose the anonymous donor. Their choice was influenced by fears of interference from a third party, their desire to be ‘a normal family’, and, particularly for men, worries that the donor might pose a threat to them and affect their children’s feelings towards them.”).

or with connection, irrespective of whether it was knowledge alone or some sort of relationship between biological and social fathers or between the biological father and the child. Naming the man who provides sperm a “donor,” on the other hand, means he is not called or treated as a father.

Powerful evidence exists that genetic connection is important. The existence of sites that connect donors and donor-conceived children speaks to the strong desires of donors and children to know and perhaps connect not only with each other, but also with other children conceived from the same donor.<sup>40</sup> This new territory of connection is fragile and uncharted outside the law. Interestingly, the debate about regulation concerning this development, and the related issue of whether sperm donors should be limited in the number of children they create, has occurred without consideration of its impact on masculinities or fatherhood. This development of kinship ties also is focused on genetic links, not on links between various parents with connections to the child.<sup>41</sup>

Focusing on the meaning that sperm donation may have for the donor and for infertile men suggests that this is an unexplored area of vulnerability for men.<sup>42</sup> The links between donors and donor-conceived children evidence powerful connection. Infertile men experience a significant challenge to personal identity, value, and masculinity that is further triggered by the prospect of conceiving a child with another man’s sperm.<sup>43</sup> For both the biological father and the intended father, my suspicion is that there is more meaning and more vulnerability than we acknowledge. Masculinities scholars tell us that it is a cardinal precept of masculinity to avoid and deny vulnerability, but that doing so is negative for men and their relationships.<sup>44</sup> Our legal structure and our cultural

<sup>40</sup> See, e.g., DONOR SIBLING REGISTRY: EDUCATING, CONNECTING AND SUPPORTING DONOR FAMILIES, [www.donorsiblingregistry.com](http://www.donorsiblingregistry.com) (last visited Mar. 8, 2013).

<sup>41</sup> See Corinne P. Hayden, *Gender, Genetics, and Generation: Reformulating Biology in Lesbian Kinship*, 10 CULTURAL ANTHROPOLOGY 41, 43 (1995).

<sup>42</sup> On vulnerability and men, see Dowd, *Fatherhood and Equality*, *supra* note 8, at 1051 (exploring how vulnerability analysis might be used to change the ways in which men care for others); on the use of vulnerability analysis and concepts to address inequality and achieve justice, see Martha Albertson Fineman, *The Vulnerable Subject: Anchoring Equality in the Human Condition*, 20 YALE J.L. & FEMINISM 1, 1 (2008) (exploring the ways in which vulnerability analysis can offer a more effective approach to achieving social equality in law than can equal-protection analysis); Martha Albertson Fineman, *The Vulnerable Subject and the Responsive State*, 60 EMORY L.J. 251, 255 (2010) (arguing that vulnerability analysis brings a wider array of societal institutions into the discussion of human rights than does traditional equal protection analysis); for an overview of vulnerability work, see *Vulnerability and the Human Condition*, EMORY U., <http://web.gs.emory.edu/vulnerability/resources/index.html> (last visited Mar. 8, 2013).

<sup>43</sup> CAHN, *supra* note 19, 13–30.

<sup>44</sup> See Kimmel, *Masculinity as Homophobia*, *supra* note 13, at 119, 127; see also C.J. PASCOE, DUDE, YOU’RE A FAG: MASCULINITY AND SEXUALITY IN HIGH SCHOOL 31–51 (2007); WILLIAM POLLACK, REAL BOYS: RESCUING OUR SONS FROM THE MYTHS OF BOYHOOD 3–19, 43–51 (1998); Leah C. Funk & Cherie D. Werhun, “You’re Such a Girl!” *The Psychological Drain of the Gender-Role Harassment of Men*, 65 SEX ROLES 13, 13–15 (2011); Matthew Jakupcak, Matthew T. Tull & Elizabeth Roemer, *Masculinity, Shame, and Fear of Emotions as Predictors of Men’s Expressions of Anger and Hostility*, 6 PSYCHOL. MEN & MASCULINITY 275, 275–76 (2005); John M. Kang, *Manliness’s Paradox*, in MASCULINITIES AND THE LAW: A MULTIDIMENSIONAL APPROACH, *supra* note 9, at 136, 136–45; John M. Kang, *Manliness and the Constitution*, 32 HARV. J.L. & PUB. POL’Y 261, 268–69 (2009).

norms around sperm donors and infertility similarly arguably hide vulnerability; we don't talk about it, we cram it down (although there is also some sympathy but the assumption is that this is embarrassing and difficult). Imagine what might be conveyed in counseling for donors and donees. What of the possible connections between men, rather than reinforcing hierarchy among them?

Of course, not all sperm donors must be thought of in relation to infertile men, or to heterosexual men. Focusing in particular on single women and lesbian couples, "allowing" sperm to be used in this way reflects a movement toward imagining the creation of family without fathers.<sup>45</sup> Men's contribution to these acts of family formation might be understood as an egalitarian act, contrary to historical norms of patriarchy and heterosexism. This reconstruction of masculinity, or creation of an alternative masculinity, is remarkable. At the same time, in the donor world, sexual orientation of donors remains a powerful negative current, and sperm, although available, is less accessible to lesbian couples, single women (whether lesbian or straight), and gay men.<sup>46</sup>

One other strong theme in this particular article about the donor with 150 children is the reinforcement of male hierarchies. In the article, there is a connection between fertility and fatherhood. That is, having "good" or "strong" sperm, the ability to have children (potentially many children, even 150), is a sign of virility. This does not reinforce caring for children, nurturing them, but simply producing them. If this reinforces manhood, it also reinforces the separation between manhood and fatherhood. Other attributes of "good" or valued sperm reinforce other hierarchies among men, especially hierarchies of race, sexual orientation, and class.<sup>47</sup> Sexual orientation hierarchy is clear from the dialogue, which indicates that sexual orientation is a question asked of donors, and few donors are gay.<sup>48</sup> Class is evident, from the longstanding model of asking medical students or college students to donate to the descriptions of donors, which emphasize their educational levels and intellectual potential. Class is also evident in the individuals who use ART.<sup>49</sup>

When class is evident, race is likely there as well. The world of sperm donors reflects hegemonic masculinity in its favored characteristics of donors and in the makeup of the parents who use it to create children. It is overwhelmingly a white world.<sup>50</sup> This obsession with race connects to the work of Dorothy Roberts on the reemergence of a race-specific focus in genetics, the attempt

<sup>45</sup> See NANCY D. POLIKOFF, *BEYOND (STRAIGHT AND GAY) MARRIAGE: VALUING ALL FAMILIES UNDER THE LAW* 52 (2008).

<sup>46</sup> Beth Littrell, *Bias Against Gays and Lesbians*, N.Y. TIMES: ROOM FOR DEBATE (Sept. 14, 2011, 11:31 AM), <http://www.nytimes.com/roomfordebate/2011/09/13/making-laws-about-making-babies/fertility-industry-victimizes-gays-and-lesbians>. Littrell notes that FDA regulations on sperm donors ban gay men as donors unless they have been celibate for the preceding five years, despite procedures in place to ensure the safety of sperm for all donors, and also cites to cases involving discrimination against gays and lesbians from sperm banks. *Id.*

<sup>47</sup> See CAHN, *supra* note 19, 13–30, 52–54.

<sup>48</sup> *Cf. id.* at 22 (discussing the extent of the information clinics collect from donors and provide to potential donees); see also *Sperm Donation: Other Screening Criteria*, FERTILITY O, <http://www.fertilityproregistry.com/article/sperm-donation-other-screening-criteria.html>.

<sup>49</sup> CAHN, *supra* note 19, at 14–16.

<sup>50</sup> *Id.* at 14.

to re-invent race as a marker.<sup>51</sup> This is yet another place where masculinities analysis triggers racial analysis to a greater degree, I would argue, than does conventional feminist analysis. The assumed subject of ART is white; the assumed donor sperm is white and straight, as is the assumed beneficiary, or the preferred one. So ART in general reproduces male hierarchies, including the hierarchy of the beneficiary over the donor. It does so by combining privilege and subordination: the privilege of no commitment or responsibility, the subordination of feelings and connection, or even acknowledgment. But as Roberts points out, we also have to connect all of this to our support for white reproduction and our denigration of reproduction by people of color, particularly poor people—especially black women.<sup>52</sup> I would add that our stories about male disconnection, and failure to parent particularly, identify black men. Think of our response to stories of men who have fathered multiple children and fail to support them, or mothers with children of multiple fathers who cannot support them; now imagine the issue of sperm donors and regulation of sperm donation if most or all of the participants were black.

In summary, if we are going to think about whether or not to regulate sperm donation or, more broadly, about male infertility or men's relation to ART, that ought to be done—in my view—with explicit attention to the impact on fatherhood and masculinities. As currently constructed, sperm donation reinforces a model of masculinity that values virility but reinforces separation between men and children that undermines nurture and fails to explore other potential relationships between men and men, as well as men and women. Although chosen social fatherhood is reinforced, it is not done in a way that is explicit and open about infertility and how we construct multiple fatherhood. Fatherhood is noticeably absent in the discussion about sperm donors, as is masculinity, despite the fact that, when limited to donors alone, this is an all-male category. Sperm donation is constructed as a privilege, but by ignoring potential connections and the importance of nurture, it does so with a significant price that constitutes subordination of a more healthy and positive male identity and relationships and of nurturing fatherhood.

### C. TESTOSTERONE: MANHOOD AND FATHERHOOD

The separation between manhood and fatherhood is explicit in the reporting of the study on testosterone and fatherhood.<sup>53</sup> Although this story did not generate a call for regulation or legislation, in many ways it highlights the need for a policy of affirmative cultural change, because it so clearly, as reported in many stories, pits fatherhood (especially engaged, nurturing fatherhood) in opposition to manhood. This challenges our thinking at the most visceral level because of the strong association of this specific hormone, testosterone, with manhood. The empirical data is framed as justifying men's dissociation from their children: dissociation is essential to self-preservation, to remaining or

<sup>51</sup> See generally DOROTHY ROBERTS, *FATAL INVENTION: HOW SCIENCE, POLITICS, AND BIG BUSINESS RE-CREATE RACE IN THE TWENTY-FIRST CENTURY* 55–258 (2011).

<sup>52</sup> See *id.* at 38–39.

<sup>53</sup> See Belluck, *supra* note 4.

being a man.<sup>54</sup> This is a powerful set of assumptions about identity that distances fathers from caregiving. This essentialist biological reasoning also reinforces views of difference between mothers and fathers, women and men. But the study might be presented quite differently, as an opportunity for the kind of cultural reorientation essential to more engaged fatherhood, by foregrounding information about men's hormonal support of parenting as well as exposing a more nuanced understanding of testosterone and masculinities.

The dominant reporting reflects the core relationship between hegemonic masculinity and fatherhood: that they are in opposition, because being a nurturing father means being less of a man. It constructs manhood in an essentialist way, as driven by hormones that explain and excuse who men are and what they do. It sustains a mythology about manhood and masculinity rather than raising awareness and knowledge. It thus both privileges and subordinates men, constructing identity as limited, molded, and driven by biology, and denies or at the very least undermines a different construction of masculinity by deeming it "unnatural," impossible, or even unhealthy.

The study, as its authors acknowledged in the days following the flood of media stories, clearly hit a nerve.<sup>55</sup> As the first line of the *New York Times* article about the testosterone study states: "This is probably not the news most fathers want to hear. Testosterone, that most male of hormones, takes a dive after a man becomes a parent."<sup>56</sup> The worries expressed in the article were about sexuality, hairy chests, deep voices, big muscles and sperm counts, or, as one expert put it, "[a]m I going to remain a guy?"<sup>57</sup> In many of the other stories about the study, there were similar concerns. *Fatherhood and Testosterone: Scientific Fact; Kids Make You Less Manly* headlined a story on the website AskMen.com. "If the sound of becoming Mr. Mom is emasculating, that's because it, in fact, is."<sup>58</sup> Similarly, the *Los Angeles Times* story about the study began: "Hormonally speaking, becoming a father may make you less of a man . . ."<sup>59</sup> Some stories did emphasize a different read of the study, one which characterized it as presenting evidence of men's biological disposition to nurture children and collaboratively parent with partners. *Fatherhood, Not Tes-*

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<sup>54</sup> See *id.*

<sup>55</sup> Lee Gettler et al., *Fatherhood, Childcare, and Testosterone: Study Authors Discuss the Details*, *Sci. Am.* (Oct. 5, 2011), <http://blogs.scientificamerican.com/guest-blog/2011/10/05/fatherhood-childcare-and-testosterone-study-authors-discuss-the-details/> [hereinafter Gettler et al., *Fatherhood, Childcare and Testosterone*] (blog from the authors of the study that came out after the publication and media reports of the study).

<sup>56</sup> Belluck, *supra* note 4.

<sup>57</sup> *Id.*

<sup>58</sup> Golokhov, *supra* note 6.

<sup>59</sup> Amina Khan, *Fatherhood Depletes Testosterone, Study Finds*, *L.A. TIMES* (Sept. 12, 2011), <http://articles.latimes.com/2011/sep/12/health/la-he-fathers-testosterone-20110910>.

tosterone, *Makes the Man* claimed one story.<sup>60</sup> But, it was a persistent theme that men needed to be reassured that this data was not necessarily bad news.<sup>61</sup>

The focus of the study is on mating behavior, fatherhood, the interaction of hormones and behavior, and cultural norms. Much of the study focuses on correlation, not causation, but the popular readings of the study expose the construction of masculinities and the importance or value of traits associated with testosterone and the tendency among some to slide toward biological explanations that reinforce difference and hierarchy. The published study is quite care-

<sup>60</sup> See Scott Simon, *Fatherhood, Not Testosterone, Makes the Man*, NPR (Sept. 17, 2011, 8:00 AM), <http://www.npr.org/2011/09/17/140557571/fatherhood-not-testosterone-makes-the-man>. Yet this story also reflects a yearning for high testosterone. In the story the focus is on loss of libido, and the end line reflects the attachment to testosterone as well as comparison and hierarchy among men: "For most fathers, losing a few jots of testosterone is a trifling sacrifice for the huge joys of children. Besides: think how depleted Brad Pitt must be." *Id.*; see also Jennifer Welsh, *Fatherhood Lowers Testosterone, Keeps Dads at Home*, SCI. AM. (Sept. 12, 2011), <http://www.scientificamerican.com/article.cfm?id=fatherhood-lowers-testosterone-keeps-dads-at-home> (Opening with this line: "Men may not go on a hormonal rollercoaster with their pregnant partners, but once the baby shows up, their bodies biologically transition into 'daddy mode,' suggests a new study finding that levels of testosterone, the 'macho' sex hormone, drop in new fathers.").

<sup>61</sup> For example, the *Boston Globe* interviewed one of the experts who commented on the original *N.Y. Times* story, Professor Peter Ellison, a professor of anthropology at Harvard. The *Globe* ran the story under the headline, *Rise and Fall of Male Hormones*. See Karen Weintraub, *Rise and Fall of Male Hormones*, BOSTON GLOBE (Sept. 19, 2011), <http://www.bostonglobe.com/arts/2011/09/18/rise-and-fall-male-hormones/GynDH680A0BVGwafvV9r8O/story.html>. Although the story explores very interesting parallels between hormones in men's lives as compared with hormones in women's lives, it is interesting that the first question asked in the interview focuses on the threat to masculinity: "A study published last week found that a man's levels of the hormone testosterone generally fall when he has children. Beyond the blow this may deliver to a man's ego, what does this kind of research tell us?" *Id.*

Interestingly, one blog strongly resisted the conclusion that the study supported men as nurturers as unsubstantiated by a close read of the study, and reflective of an agenda to use the study to construct a different vision and meaning of fatherhood:

Testosterone affects and is affected by many things. It probably does adjust to environmental cues as men become mates and then fathers. But we're just beginning to explore how and why this happens. The new evolutionary-psychology theory we're being fed has less to do with earth-shattering evidence than with changes in our economy and culture. Women are gaining more respect and consideration. Wages have shrunk, so both parents have to work for pay. Men have to help out more at home, and they can't get away with cheating the way they used to. For a bunch of reasons, we need a more domestic and egalitarian theory of masculinity. And we're using this study to sell it.

William Saletan, *Testosterone and Fatherhood: Are Men Designed to Nurture Children, Tarzan the Diaper Man*, SLATE (Sept. 14, 2011, 9:43 AM), [http://www.slate.com/articles/health\\_and\\_science/human\\_nature/2011/09/tarzan\\_the\\_diaper\\_man.single.html](http://www.slate.com/articles/health_and_science/human_nature/2011/09/tarzan_the_diaper_man.single.html). The sub-headline of the article is: "*Testosterone shrinks when men become dads. Does that mean they're designed to nurture kids?*" *Id.* (emphasis added). The opening of the article is:

For years, we've been told that men and women evolved for different roles. Men hunted, fought, and prowled for sex, leaving women to raise the kids. Now we're being told a different story: Men, like women, are designed to nurture children.

It's a nicer story, but it's just as simplistic. And the evidence is just as ambiguous.

*Id.* The story then goes through a host of interpretations and implications of the study and reactions to it, and is critical of the way it is being used to promote involved fatherhood (not that involved fatherhood is a bad thing, but it argues the use of the study in this way means it is being used in a "politically correct" way). *Id.*

ful to locate this research in the context of other research about testosterone, particularly research that has focused on men's partnering and reproductive behavior. Entitled *Longitudinal Evidence That Fatherhood Decreases Testosterone in Human Males*,<sup>62</sup> the study documents significant drops in testosterone level associated with father care using a longitudinal study that began in the Philippines in 1983.<sup>63</sup> Morning and afternoon testosterone ("T") levels were collected first when the men in the study were twenty-one and again at twenty-six, in Cebu, Philippines, where father care of children is common.<sup>64</sup> Prior research had shown that partnered men have lower T, and partnered fathers have the lowest T overall.<sup>65</sup> These researchers wanted to determine the link between fatherhood, father care, and these low T observations. One possibility was that men with lower T became partnered and fathers.<sup>66</sup> But, instead, research indicated men with higher T when single were more likely to find mates and become fathers. This substantiates previous research correlating high T with "traits and behaviors that contribute to male mating effort, including musculature, libido, conspecific aggressivity, and courtship."<sup>67</sup> Low testosterone in fathers therefore represented a drop in T levels, and those fathers who engaged in the most care (they divided into none, one-to-three hours per day, and three-or-more per day), had the greatest change in T levels.<sup>68</sup>

The pattern of changing testosterone levels, according to the study, indicates that men's hormone levels respond to their behavior and their behavior is culturally determined.<sup>69</sup> This interaction of culture and hormones is reflected in other studies, including one that compared T levels in two groups of fathers in Tanzania, those who had a norm of paternal care (who had decreased T levels) versus those who lived apart from wives and saw care as women's work (who had T levels similar to single males).<sup>70</sup> The study concludes that testosterone levels reflect differences in the behaviors that are successful to attract a partner

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<sup>62</sup> Lee T. Gettler et al., *Longitudinal Evidence That Fatherhood Decreases Testosterone in Human Males*, 108 PROC. NAT'L ACAD. SCI. U.S. (PNAS) 16,194 (Sept. 27, 2011), <http://www.pnas.org/content/108/39/16194.full.pdfhtml?sid=73d488fb-d876-4132-9fea-c5e4b9f3ecc7> [hereinafter Gettler et al., *Longitudinal Evidence*]; see also Gettler et al., *Fatherhood, Childcare and Testosterone*, *supra* note 55.

<sup>63</sup> Gettler et al., *Longitudinal Evidence*, *supra* note 62, at 16,194.

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> *Id.* at 16,196. This is significantly higher than the level of care currently engaged in by U.S. fathers. The average wife engages in thirty-one hours per week of housework, compared to fourteen hours for her husband, a ratio of 2:1. The childcare ratio is 5:1, with women who are primarily at home engaging in fifteen hours a week of childcare, and men two hours per week; when both are working full time, women reduce to eleven hours per week, and men to three hours per week. Lisa Belkin, *When Mom and Dad Share It All*, N.Y. TIMES, June 15, 2008, at MM44. See also reference data in Dowd, *Fatherhood and Equality*, *supra* note 8, at 1053-54.

<sup>69</sup> Gettler et al., *Longitudinal Evidence*, *supra* note 62, at 16,198.

<sup>70</sup> This study was referenced at the very end of the *L.A. Times* article by Amina Khan, on the work of Peter Ellison (the professor interviewed by the *Globe*).

The results support the idea that testosterone levels aren't static but respond to a man's behavior and cues from his cultural environment, said Peter Ellison, an evolutionary biologist at Harvard University who was not involved in the study.

versus the behaviors that support successful relationships and fathering. It is not that testosterone controls behavior, but that it seems to reflect behavior. In so doing, because of the associations between testosterone and certain traits, this variability shows a complex process of culture, behavior, and physical changes.<sup>71</sup>

The study also exposes mythology about testosterone. It appears that the connections between testosterone and men are complex, nuanced, and reflective of the interplay (not the causal connection) between hormones and conduct and the particularly strong support of nurture and relational connection in men. I do not mean to exhaustively detail research on testosterone here, but the persistence of misinformation and stereotypes is striking. For instance, although men have testosterone and it is associated with male traits, women have testosterone also.<sup>72</sup> Male and female testosterone levels are the same until about age eight and then diverge, and testosterone levels rise significantly for males at puberty.<sup>73</sup> There is a lifelong pattern of decline of testosterone with age, which correlates with increasing levels of impotency (18% at age sixty, 27% at sev-

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Ellison pointed to a 2008 paper he co-wrote, in which he and colleagues documented the very different parenting styles of men in two neighboring groups living around Lake Eyasi in northern Tanzania, the Hadza and the Datoga. Hadza men were ideal fathers in many ways, Ellison said: They carried, cleaned, fed and pacified their infants and slept around the same hearth as their children.

The Datoga, on the other hand, considered child-rearing to be women's work, so they rarely interacted with their infants and slept and ate separately from their wives.

Those opposing views of fatherhood were mirrored in the men's hormones. The Datoga fathers' testosterone levels were no different from those of their childless peers. Among the Hadza, however, fathers registered levels that were 30% lower in the morning and 47% lower in the evening than for men who weren't raising children.

The study was the first to show that a father's role in child care was directly linked to testosterone production.

Khan, *supra* note 59; see also Martin N. Muller et al., *Testosterone and Paternal Care in East African Foragers and Pastoralists*, 276 PROC. ROYAL SOC'Y B 347, 347 (2008).

<sup>71</sup> The study also concludes that "T exhibits a bidirectional relationship with reproductive strategy in human males. . . . After becoming partnered fathers, these men experienced dramatic reductions in both waking and evening T, which were substantially greater than the age-related declines observed in single nonfathers. . . . [This] supports the hypothesis that father-child interaction likely contributes to suppressed paternal T among fathers." Gettler et al., *Longitudinal Evidence*, *supra* note 62, at 16,197. Furthermore, "[The results] add to evidence that human males have an evolved neuroendocrine architecture shaped to facilitate their role as fathers and caregivers as a key component of reproductive success." *Id.* at 16,198.

<sup>72</sup> Some of the information about hormones shows up on sites explaining how hormones play into the transition from female to male transsexuals. Hormone therapy is part of the process, and this defuses myths. So testosterone is increased to male levels to induce secondary sex characteristics. See, e.g., *Hormones and the Body: A Brief Overview*, HUDSON'S FTM RESOURCE GUIDE, [www.ftmguide.org/hormonebasics.html](http://www.ftmguide.org/hormonebasics.html) (last visited Mar. 9, 2013). One of the myths is that it will cause anger and aggression, and that is only a myth; also that the use here and the goal (secondary sex characteristics like hair, voice, etc.) is very different from steroid use to enhance performance in athletes. See *id.*; see also Christopher Mims, *Strange But True: Testosterone Alone Does Not Cause Violence*, SCI. AM. (July 5, 2007), [www.scientificamerican.com/article.cfm?id=strange-but-true-testosterone-alone-doesnt-cause-violence](http://www.scientificamerican.com/article.cfm?id=strange-but-true-testosterone-alone-doesnt-cause-violence).

<sup>73</sup> LLOYD DEMAUSE, *THE ORIGINS OF WAR IN CHILD ABUSE* ch. 2, [http://www.psychohistory.com/originsofwar/02\\_whymalesaremoreviolent.html](http://www.psychohistory.com/originsofwar/02_whymalesaremoreviolent.html) (last visited Mar. 8, 2013).

enty, 75% at eighty) that is the male equivalent of menopause, or andropause.<sup>74</sup> It is no coincidence that impotence is defined as the inability to have or sustain an erection, and the word also is defined as meaning powerlessness.<sup>75</sup> The broader definition reflects a core masculinity norm but also ignores and stigmatizes the natural process of aging.

One of the strongest myths about testosterone concerns the relationship between testosterone and violence.<sup>76</sup> Testosterone does not cause aggressiveness, and if aggressiveness is limited to physical violence, there is virtually no connection.<sup>77</sup> Many studies have found high testosterone levels in the most

Until about eight, boys and girls have the *same* level of testosterone, but by age four, boys are more violent and domineering than girls. When men have had testosterone artificially lowered or been castrated, aggression can increase. *Id.* DeMause cites to two researchers, who show testosterone levels do not predict aggression. *Id.* Neurobiologically, boys have smaller corpus callosums, which he states would mean boys would benefit from more love and attention since their needs are greater. *See id.* But of course—no such thing—boys are given less care and support, and are abused more often. By age three, boys are twice as violent as girls. *Id.* “It isn’t ‘aggression’ males display; its *bravado*—defensive testing and disproof of their fears.” *Id.* Distanced by their mothers and socially told to be “tough,” William “Pollack accurately shows boys are not more ‘aggressive’—they are just more often *shamed* if they show their feelings.” Pollack also accurately says “bravado is a defense against shame . . . we too often mistake for ‘badness’ what is really covert sadness and frustration about having to fulfill an impossible test of self.” *Id.* (citing WILLIAM S. POLLACK, *REAL BOYS’ VOICES* 36 (2000)). “The propensity of beating boys instead of understanding and caring for them is both cross-cultural and cross-historical.” *Id.* If they are raised with empathy, boys will be non-violent. *Id.* Because it takes risks, “boys’ violence is also self-destructive, a real re-experiencing of the hurts and fears they have experienced. . . . Anything is better than being seen as weak, abandoned, unloved; better to take risks and court death.” *Id.* Criminal acts are tied to “getting respect” or “proving I was a man.” *Id.* (citing JAMES GILLIGAN, *VIOLENCE: REFLECTIONS ON A NATIONAL EPIDEMIC* 109 (1996) and MYRIAM MIEDZIAN, *BOYS WILL BE BOYS: BREAKING THE LINK BETWEEN MASCULINITY AND VIOLENCE* 205 (1991)).

<sup>74</sup> *A Brief Description of Testosterone*, AM. VEIN & AESTHETIC INST., [http://www.medrehab.com/Description\\_Testosterone.php](http://www.medrehab.com/Description_Testosterone.php) (last visited Mar. 8, 2013).

<sup>75</sup> The consequences of impotency include less drive to life, impaired erections, thinner muscles, mental acuity fades, depression, aches and pains, and sometimes excessive perspiration. *Id.* “Impotent” is defined as being unable to have or maintain an erection, and one connection, among many, is to low testosterone, but it is interesting that the word also means powerless. *Id.*; *see also Impotent*, AM. HERITAGE DICTIONARY, <http://americanheritage.yourdictionary.com/impotent> (last visited Mar. 8, 2013) (defining impotent as “[l]acking physical strength or vigor; weak . . . [l]acking in power, as to act effectively; helpless.”).

<sup>76</sup> *See, e.g.,* Jed Bland, *Hormones in Context: Testosterone and Aggression*, ABOUT GENDER (July 3, 2004), [http://www.gender.org.uk/about/06encrn/63\\_aggrs.htm](http://www.gender.org.uk/about/06encrn/63_aggrs.htm).

<sup>77</sup> Testosterone does not cause violence. *See Mims, supra* note 72. More testosterone does not equal more aggressiveness. *Id.* The latest research shows a weak connection, and if you limit the question to testosterone and physical violence, “the connection all but disappears.” *Id.* There is evidence in this from the comparison of the behavior of girls and boys when they have the same level of testosterone as young children. *See DEMAUSE, supra* note 73. Patterns of more physical and violent behavior emerge in boys beginning at very young ages. *Id.* Research into the motivation of violent criminals also suggests it is their need for respect and manhood that drives their actions. *See id.*; *see also Mims, supra* note 72. The study argues testosterone is less a cause than an “accomplice”; it is present but does not cause behavior. Most violent prisoners of either sex have high T. Testosterone is tied to dominance, but dominance is not always physical. “[A] growing body of evidence suggests that testosterone is as much the result of violence as its cause.” *Id.*

violent male and female prisoners. But, it appears that violence causes the rise in T levels, rather than the other way around. Furthermore, although testosterone is linked to social dominance, dominance is not always physical or violent. The reasons for men's violence, many researchers conclude, is connected to men's socialization and the cultural messages of what it means to be a man, as well as men's experiences with violence.<sup>78</sup>

As one researcher notes, the felt impact of testosterone particularly in puberty cannot be ignored, and its positive impact on the lives of men justifies its importance just as hormones positively impact the lives of women. "Testosterone is, by definition, a very sexy substance. It's not surprising that anything involved with testosterone seems to make headlines."<sup>79</sup> But, it may be that it is not this simple. Rather, it is so interlinked with culturally constructed masculinities that the fascination with testosterone is linked to norms of masculinities, and, therefore, how we think about it tells us much more about cultural norms than physical "facts."

The cultural norms of masculinities in the articles about the testosterone study tend to construct manhood and fatherhood as in opposition to each other.<sup>80</sup> The stories see testosterone as defining manhood, as causing it, and identify the core characteristics of manhood physically. These stories ignore the actual relationship between hormones and men, perpetuate mythology, and bury realities about hormones, behavior, relationships, and parenting. Since so much is commonly linked to testosterone, it also reinforces mythology such as the link between testosterone and violence. It characterizes testosterone as a "man" hormone rather than the reality that both men and women have hormones that we associate only with one sex. It constructs the idea of men as defined by biology, for both good and ill. In relation to fatherhood, it casts nurture as threatening. This is paradigmatically essentialist and removes gender from the process; it makes it all about biology. At the same time, it ignores the more complex, nuanced version of the role testosterone plays in all bodies, hormones more generally, and how we think about all this.

If masculinity is defined this way, it confers privilege only if one imagines not caring about, or for, one's children to be a privilege. Or, that having the qualities identified as supremely masculine are the best, most important ones to have because they are markers of power, position, and hierarchy. It subordinates men who do not exhibit these characteristics or behave in a way that lowers this biological marker of manhood. It also subordinates children by distancing men from their care. It separates men from the value of care for themselves and their children. It attempts to draw a rigid boundary around what men can do and call it medical or natural rather than constructed.

<sup>78</sup> As evidence of the strength of myths, women who thought they were being given doses of testosterone started acting less fairly and more aggressively. See Alison Abbott, *Testosterone Link to Aggression May Be All in the Mind*, NATURE: INT'L WKLY. J. SCI. (Dec. 8, 2009), <http://www.nature.com/news/2009/091208/full/news.2009.1131.html>. For a report about the study, see Poor, *Misunderstood Testosterone*, WORLD SCI. (Aug. 3, 2010), [http://www.world-science.net/exclusives/091207\\_testosterone.htm](http://www.world-science.net/exclusives/091207_testosterone.htm).

<sup>79</sup> *Testosterone Research*, 3X METHOD, <http://www.3xmethod.com/resources-library/testosterone-research/> (last visited Mar. 9, 2013) (quoting Dr. Richard Spark).

<sup>80</sup> See, e.g., Belluck, *supra* note 4.

What effect does this have on fatherhood? It does not particularly reinforce breadwinning, but it does reinforce that “breadwinner” for men does not, and should not be redefined to, include any or much care. Perhaps it is implicit that real men work, that work is primary and nearly all-encompassing. Nurture as caregiving is secondary to what men most have to offer and what is best for them. It powerfully reinforces the idea of sex differences, that men should not do what women do (care), because care reduces a critical physical marker of manhood. It reinforces that high testosterone is a good thing; it makes one more manly. This has multiple implications for fatherhood but also, more broadly, for differentiation of men and women as essential and biologically based and “natural.” It makes dominance natural; it makes violence natural and a necessary evil.

Because of this strong reinforcement of biological essentialism, this construction of masculinity powerfully reinforces hierarchy. One of the truths about testosterone is that it feeds mating behavior, and that behavior retains dominance as a characteristic—over other men and over women.<sup>81</sup> But, as this study indicates, testosterone is malleable, influenced by conduct.<sup>82</sup> So, another truth is that a reduction in testosterone correlates with fostering relationships and caring for children, suggesting nature strongly supports men in that role.

Constructing fatherhood as oppositional to manhood reinforces the core ways in which masculinities blocks more engaged father care by suggesting that biological drives will undermine any attempt at a changed norm of engaged nurturing fatherhood. It constructs masculinities and men as valuing qualities associated with masculinity and, to the extent testosterone is a marker, a high level of testosterone must be maintained. Any threat to masculinity so defined will be resisted. Fatherhood is then linked in with other threats. So fatherhood defined as nurture, in particular, is threatening and undermining of manhood. This reinforces the hegemonic norms of the male breadwinner, hierarchy, and sex difference rooted in essential, hardwired difference. It privileges by attaching value to characteristics associated with testosterone, or high levels of testosterone, and arguably excuses the downside of testosterone without opening the door to examining the more complex connections between negative behavior, testosterone, and violence. It subordinates by reinforcing the message that care of children is to be avoided, denying those relationships.

The path to change is instead to use the information about the calibrating of testosterone with certain behaviors and to continue to unravel and expose the foundational elements of care and connection. Fostering vulnerability, as a positive foundation of care and relationships, is critical.

So what might have been, and could still be, is a reframing of the starting point and the vision in this information about men. The headline might be *Nature Supports Nurture: Men are Hardwired for Fathering* or some such way of envisioning significant father care and seeing it as natural, but not just because of hormonal encouragement. Rather, the story is that conduct, driven by beliefs, makes a difference. Nurture is good for men and for their children. Their bodies reinforce those positive connections. That might also cause us to

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<sup>81</sup> Mims, *supra* note 72.

<sup>82</sup> Gettler et al., *Longitudinal Evidence*, *supra* note 62, at 16,194.

further explore other aspects of mind–body connections and the links between culture and outcomes.

Testosterone gets our attention. The testosterone study could trigger a much more far-reaching debate about fatherhood and about hormones and men. It might be the basis to argue that nature supports relationships and parenting. That makes sense, but it challenges the story of gender-role specialization, rationalizing inequality, and excusing men’s absence from care. Beyond that, it might trigger a more open and honest sharing of knowledge about hormones and the life course of men. For example, we might be more open about puberty for boys and the impact of this powerful hormonal shift. We might share as common knowledge that testosterone levels increase and decrease with a range of activities, and that this occurs for both men and women. We might inquire whether we think differently about hormones for women and men. We might also share the knowledge of hormonal changes connected to aging, the particular issue for men of an increasing rate of impotency as they age, and the consequences of impotency for physical and mental health.

#### D. CONCLUSION

What is striking in both of these stories is the theme of disconnection. One of the core pieces of the asymmetry between mothers and fathers is the pattern of men’s lack of involvement in the nurture of their children (along with the pattern of unequal nurture when shared with a female partner in the same household).<sup>83</sup> In the sperm donor story, we are encouraging biological fathers to separate from their children and treat that separation as inconsequential. In the testosterone stories, the message is “Don’t do a lot of care if you want to be a man or ‘keep’ your manhood.” Fatherhood is emasculating, or, at least, it is emasculating if it is defined as actually nurturing children. Both feed into essentialism about men, gender difference, biologically based difference (which is a foundation in both instances for power and hierarchical position), and continued rejection of a redefined fatherhood grounded in nurture, care, and egalitarian parenting.

So based on this analysis, what are the implications for law and policy?

Sperm donation and debate over regulation (or lack thereof) should include conscious consideration of masculinity and fatherhood. As currently constructed, sperm donation is not a positive masculinity or fatherhood norm. Although I would not bar sperm donation, I would not encourage it. Donors should be carefully counseled, and the decision to be a donor should be carefully thought through. Policy should consider the relationship between the donor and the intended parents as well as any resulting children. If sperm donation is permitted to facilitate family formation, our goal nevertheless should be to encourage men to value themselves and their relationship to children.

A public health effort to support engaged nurturing fatherhood should include information about testosterone and male sexuality. In particular, it should recast changing testosterone levels as normal and supportive of committed relationships and engaged parenting.

<sup>83</sup> Dowd, *Fatherhood and Equality*, *supra* note 8, at 1053–54.

Hormones are about vulnerability, mind-body connections, and the powerful impact of social constructions on physical, health-connected outcomes. It seems clear that a particularly important piece of this is separating hormones and the impact of culture, with respect not only to relationships and parenting but also to violence and aggressiveness. A robust dialogue is essential so that a “defense” of testosterone at some imagined “normal” level does not become an implicit “cause” for violence as a “natural” and unavoidable piece of manhood. Knowledge about the role of culture and, therefore, the potential for individual and social reconstruction of masculinities and fatherhood can be the foundation for reconstructing men’s parenting.

Finally, it is essential that both of these analyses be brought back to, connected to, motherhood and women’s parenting. If we perpetuate disconnection between men and parenthood, what implications does that have for women and motherhood? Do we respond differently to men than to women in creating and sustaining families and relationships?<sup>84</sup> How can we identify a different standard and construction of parenthood for men and women? Our goal should be parenthood grounded in equality and collaboration for the benefit of children, parents, and society as a whole.

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<sup>84</sup> Within six months of these stories, in February of 2012, a firestorm erupted about rules issued by the Obama administration about contraception. See, e.g., Tony Phyrillas, *7 States Sue over Obama Administration’s Birth Control Rule*, USA TODAY (Feb. 23, 2012, 8:48 PM), <http://www.usatoday.com/news/washington/story/2012-02-23/states-sue-obama-birth-control/53228212/1>. One particularly stark image was the congressional hearing concerning the rules, which included an all-male panel. Robert Pear, *Passions Flare as House Debates Birth Control Rule*, N.Y. TIMES, Feb. 17, 2012, at A13. It seemed remarkable that in 2012, when women’s sexuality and motherhood was being debated, men would deem themselves the arbiters of women’s lives. Subsequent comments by Rush Limbaugh linked contraception with promiscuity and prostitution. For the denial of a female witness by the panel, see Tom Shine, *Rep. Darrell Issa Bars Minority Witness, a Woman, on Contraception*, ABC NEWS (Feb. 16, 2012, 9:56 AM), <http://abcnews.go.com/blogs/politics/2012/02/rep-darrell-issa-bars-minority-witness-a-woman-on-contraception-2/>. For Limbaugh’s comments, presidential politics, and apology, see Robin Bravender, *Newt: Rush “Did the Right Thing”*, POLITICO (Mar. 4, 2012, 10:15 AM), <http://www.politico.com/blogs/politico-live/2012/03/newt-rush-did-the-right-thing-116335.html>. Although in this Essay my primary focus is to bring masculinities analysis to bear on fatherhood issues, it is essential, in my view, that masculinities analysis incorporate the woman question just as feminist analysis should incorporate the man question.