

# The Impossibility of Queering the Mother: New Sightings of the Virgin Mother in the ‘Secular’ State

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[nb for readers on KAR please note that this article underwent significant changes prior to publication, so please consult the published book chapter]

## Abstract

In this part autobiographical essay, I explore the social consequences of the rise of the so-called ‘tender years’ doctrine coinciding with the rise in divorce. I argue that this has led to increased gender apartheid around the figures of M-for-Mother and F-for-Father, and a new sanctification of the figure of the holy mother-and-child. I look at the inverse and complementary relations between M-for-Male and F-for-Female and M-for-Mother and F-for-Father, and I argue (counterintuitively) that origins, mothers and fathers are *queerer* in ancient myths and the Bible than they are in contemporary semantics and law. The idea of mothering-as-caring is a recent etymological innovation, hatched in the nineteenth century for very particular reasons, and supported by a distinctly modern infrastructure of ‘home’, ‘child’ and the ‘nuclear family’ (again, very recent creations). Thus this new mother-and-child is and is not like the Virgin Mary, for she relies on modern ideologies that separate the aneconomic ‘home’ from the house (the material/economic infrastructure) and on wealthy economies that create ‘children’ through the emergence of schooling for all. I call for more expansive forms and new mythologies, which are desperately needed. I use strange old biblical texts (Solomon’s judgement; the trial of Abraham) to create *unheimlich* echoes for the so-called secular state and its strange constructions of the family; and I show how the Ten Commandments continue to influence family law.

## Keywords

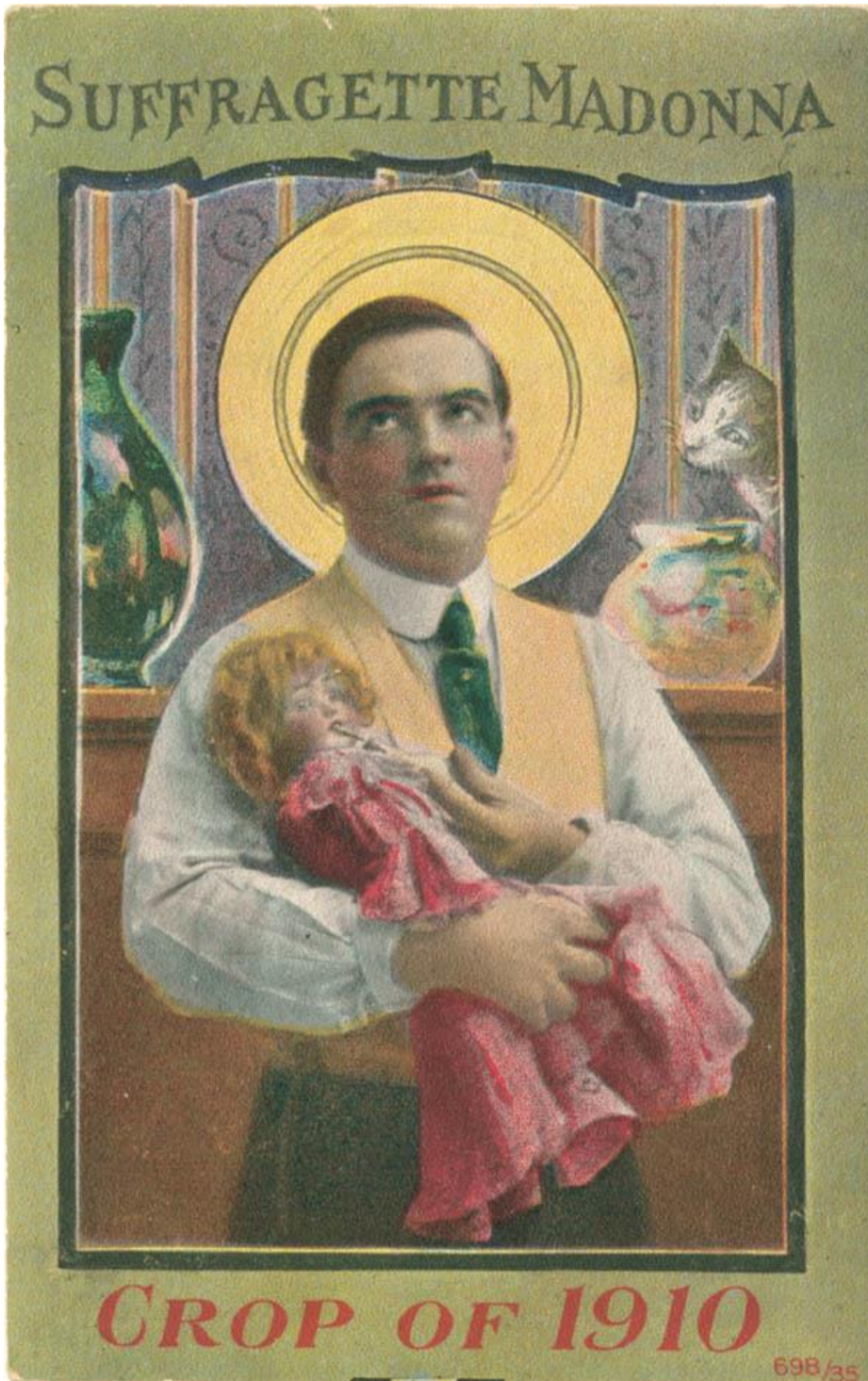
mother; father; queer; the Virgin Mary; the judgement of Solomon; divorce; family law

In the seats opposite me at the airport, the tall man is unabashedly crumpling into tears. He clutches two young girls. One, the elder, stands wrapped up in his arms, staring into the mid-distance. The other, a little blonde girl, sits on his lap and curls up into him, like the baby Jesus in a nativity scene. You'd need to squint, admittedly, to make it a nativity. The man does have long hair, but his shoulders are far too broad to be anything but a drag Mary. And I'm coming to believe, now, that nativities and pietas are the hardest scenes to queer.

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I've been teaching feminist theory for more than twenty years. Like an evangelist before a bunch of doubters I start with some basic moves—as irresistible as the quick click of the powerpoint slides. First: a little synopsis of the suffragette movement, including some choice postcards: a buck-toothed blue stocking addressing a women's meeting with the caption 'At the suffragette meeting you can hear some plain things, and see them too!'; disenfranchised men doing the laundry while their wives play cards, smoke cigarettes and debate in the House of Commons; and (wonder of wonders, absurdity of absurdities) the 'Suffragette Madonna': a father suckling his child with a glass nursing breast-bottle, standing in front of the mantelpiece with an illusory halo, created by a well-positioned golden plate (fig 1; cf fig. 2).





Next some classic examples of the asymmetry of M-for-Male and F-for-Female, straight out of Dale Spender. 'Bachelor and Spinster. Master and Mistress. Courtier and Courtesan. He's a professional; she's a professional'. See how the F term cannot sustain equal status? See how

the F term becomes sexualised? I then ask the class whether there is a male equivalent for ‘slut’ (there still is not). Follow up with a few naked Eves and a few very clothed Marys and Aurora Reinhard’s *She’s so Feminine (on the bed)* (1999).<sup>1</sup> A man with pert buttocks, a negligee and muttonchop whiskers, subverting the acquiescence of the traditional female nude: a Conchita Wurst effect. Then a little snippet from Hélène Cixous’s ‘Sorties’:  
‘Activity/Passivity; Culture/Nature; Father/Mother; Head/heart; Step, Advance, Seed, Progress; Matter, ground...that which supports the step, receptacle... Always the same metaphor...’

Job done. Point made.

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In the spring and summer of 2014, I find myself immersed in strange M and F texts that (thankfully) most people never get to read. F is clearly the cringe term. It seems so familiar, the weakness of this F. For a split second, in a tired moment, I sink back into habit and read M-for-Male and F-for-Female. But then I remember that in these legal texts it is M-for-Mother and F-for-Father. The weakness of F-for-Father is disorientating. In so many ways I am profoundly out of my comfort zone. For a moment, I lazily read M-for-male and F-or-female to get myself back into the familiar worlds I know. I long for these easy mental routines that are as simple as getting up and seeing your children at breakfast and putting them to bed at night. I am now desperate for these familiar/familial worlds.

The one thing that is familiar about these documents is that the F term is—as ever—on the back foot. F has to argue that he is an anomalous F: a ‘hands-on’ F, his solicitor calls it, as if ‘hands-off’ is the default setting for dads. F has to write testimony about his fatherly

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<sup>1</sup> You can gaze on this subversion of the gaze at <http://www.aurorareinhard.com/web/index.php?id=143>.

everydays. He has cooked meals for his children; taken them to galleries and museums; taken them to school (how many days, this taking to school? who wins the battle of the ‘taking-to-school’?); bought a kayak to take them out on the sea. He has to gather witness statements from those who can testify that he is an exceptionally and anomalously good F. I write one on his behalf. So do other friends. F-hood is assumed to be weak unless propped up by evidence. F is told is told very clearly by his legal advisors that this is not an equal and opposite game. F-hood must be asserted. Good and nurturing M-hood is assumed. Unless there are severe mental health or abuse issues (there are not), any criticisms of the mother will alienate the court. In M’s witness statements she may freely assault F’s F-hood. For example, he was absent for work trips, leaving her to mind the children because she did not work for pay outside the home. For example, he does not know how to braid the children’s hair. She was the one who attended parents’ evenings; took the children to the doctors; dropped off at school. Parenthood will be decided by a tallying of hours put in at home. The court will spend a long time discussing little details like the braiding of the hair, and inspecting the records of which parent signed the children off at nursery and school.

The man in my introductory paragraph is my partner, and the scene is a composite of the many heart-rending airport partings from his two daughters. Before putting his little girls on a chaperoned flight, we all say our goodbyes and then my partner and his daughters say their last clutching farewells, with my son and I standing close and looking at the suffering directly, while others ‘walk dully along’,<sup>2</sup> stare discretely or decorously look away. In April 2014 my partner found out, entirely by accident, that his wife (with whom he recently agreed, mutually, to divorce) had been planning for several months to move to the USA with her/his/their two daughters. He discovered this quite spectacularly when a secret job

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<sup>2</sup> A reference to W.H. Auden, ‘Musée des Beaux Arts’.

application flashed up magnified on the TV screen when his daughter was using her mother's laptop to search for a cartoon. The texts I am reading—and there are pages and pages and pages of them—are documents for a hearing in the family court. F and M (originally from the USA) and their two children have lived in the UK for eight years. Now, at the very moment of their divorce, F is being forced to respond to a petition by M to take the two daughters (aged five and nine) four thousand miles away to live with M's fundamentalist Christian parents in a little town in the mid-West. His legal documents have been prepared, in a hurry, since F only has three months to prepare for the final hearing, only having just learnt of his wife's secret plan to relocate. For a whole summer, we read nothing but this and think nothing but this, while playing with the children, who might soon no longer live half the time with us intimately, closely, their lives and minutes mixed with ours. Lives and loves and futures hang on these screeds of bureaucratic prose.

A post on the parenting website, Netmums. (There are lots like these):

Things have been going downhill with my husband for some time, and I feel sure now that we will separate at some point. I have worked full time since my daughter (now 8) was 6 months old.

We have had all sorts of arrangements over the year, from full time nursery care, to my husband working shifts, or me working partly from home. For about 5 years he has not had a stable job meaning that he's around at home a lot more than me. This has also meant that I haven't been able to give up work, or go part time.

I'm now worried that my full time working might jeopardise my custody rights if things went that far.

I already work from home one day a week, ensure I'm the one that attends parent teacher meetings, takes her to the doctor, gets shoes fitted etc etc. but I worry about

whether this is all enough.

If I was on my own, I probably would work part time, if that was what it takes. Now I'm wondering if I need to do that anyway, despite the fact my husband is always around, in order to strengthen my case. Clearly for financial reasons I'm not keen, but I care more about my daughter than my career.

I should add this is not just about 'ownership' of our daughter. I feel I'm the better parent and would worry the effects of my husband's verbal aggression, smothering and constant criticism if she didn't live with me.

An equally representative extract from one of the many online adverts for family law attorneys in the USA:

If you are a father and want to ask the court for physical custody, do not let gender stereotypes stop you. If both you and the mother work full-time, and the kids have after-school care, you may be on equal footing. In fact, if you have more flexible hours than the mother, you could have a leg up. In any event, the judge will look at what's best for the children. So if you think that you should have primary custody and that you can persuade the judge that it's in the kids' best interests, you should go ahead and ask for custody. If you present yourself as willing and able to parent, it will go a long way towards challenging any lingering prejudice against you as a father.

Some commentary: Both texts start with the assumption that M has the symbolic and legal advantage. F is told 'You may be on equal footing' despite 'gender stereotypes' if M works full time. It is even better if M works full time to the extent that she has to use afterschool care. Curiously, the *home*, understood as the cradle of child-care, is divorced from the material infrastructure: the *house*; paying the mortgage; putting bread on the table. *Home* versus *house*. Both texts start from the (correct) assumption that working more hours outside



the home jeopardises one's standing in the competitive economy of care. The modern family seems to be the only sphere where care is separated from provision. This is certainly not the case in related terms such as 'care of the elderly' or the N.H.S, where the principle is clearly 'No money, no investment, no care'.

Both texts also work from the (correct) assumption that, in the age of biopolitics, only the mathematical-bureaucratic can undermine the cultural mythologies and the ascendancy of M. The M who posts her anxieties on Netmums is carefully calculating hours worked against income and custody claims. She is also making sure that she is doing everything she can to tick the boxes to score well on the perceived application form of competitive parenthood: a form that 'natural' (as opposed to adoptive or foster parents) only need to fill out at the point of separation. She is the one who...takes the children to school; buys shoes; and goes to parent evenings (presumably not with her husband, but instead of him, or else equal parent-points would be scored).

Neoliberal states 'effac[e] the boundaries between the sphere of production and reproduction, labour and life, market and living tissues.'<sup>3</sup> They carefully monitor reproduction, birth and death rates, population demographics, fertility rates, and patterns of migration. With an anxious eye on the 'demographic time bomb' and ageing populations, they devise strategies to incentivise parenthood, (parental leave; flexible working; the stigmatisation of childlessness) while also finding ways of incentivising both partners' return to work (and taxation). Pop Foucaults and the concept of gender are widely used in government and management theory. There is clear instrumental value in the idea that 'subjectivities' and gender identities can be changed. Production and reproduction, fertility and the economy are carefully balanced in calculations of desirable and flexible roles for M and F. Feminists have

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<sup>3</sup> Jemima Repo, 'Gender Equality as Biopolitical Governmentality in a Neoliberal European Union', p. 313.

rightly worried that ‘gender’ can be ‘politically amorphous and unfocussed’, and can be deployed as a ‘equal’ and less ‘partisan’ corrective to explicitly feminist political interests.<sup>4</sup> We should also pay attention to how ‘gender’ is being used as a bioeconomic mechanism of neoliberal governmentality. According to political scientist Jemima Repo, the theory of sexed identities as manipulable roles is deployed as an ‘invisible hand’.<sup>5</sup> And yet, I have seen no public discussion of the fact that in many cases parents are reducing working hours or leaving the workplace to secure their relative positions vis-a-vis child custody. Surely it is useful to point out the more than emotional costs to the pervasive cultural and legal mythology that, when it comes to the special case of the divorcing family, paid work is in an antithetical (not supportive) relationship to *care*.

When he first rushed to the local solicitor’s office, my partner was told, sympathetically, ‘It’s hard for dads’. It’s manifestly hard for many groups in the legal system: African Americans, ethnic minorities, and women who have suffered abuse or rape. But no professional would be able to state these facts of inequity without implying that things must change. Unlike ‘It’s hard for black folk’ or ‘It’s hard for women’, ‘It’s hard for dads’ seems to be a special case of inequality: a normalised, routinised and vengeful inequality that hasn’t yet been subject to socio-political critique and so can still be spoken out loud. The exceptional status of the father rests on a narrative of past sins and institutional-legal restitution. Unlike ethnic minorities, the father was once in power—absolutely. ‘The sins of the fathers shall be visited on the fathers’ (cf; Exod. 20.5 and 34.6-7, more or less.) ‘By marriage, the husband and wife are one person in law: that is, the very being, or legal existence of the woman is suspended during the marriage, or at least is incorporated and consolidated into that of the husband;

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<sup>4</sup> Braidotti, *Nomadic Subjects*, p. 141-42. ‘The scientific-sounding term *gender* appears to strike a more reassuring note in the academic world than the more explicitly political *feminist* studies’.

<sup>5</sup> Repo, ‘Gender Equality as Biopolitical Governmentality in a Neoliberal European Union’, p. 315.

under whose wing, protection and *cover*, she performs everything; and is therefore called...a *femme-covert*...her husband, [is called] her baron, or lord'.<sup>6</sup> Thus spake Sir William Blackstone (1723-1780) in his *Commentaries on the Laws of England*. The wife was absorbed into the sovereign father. M-for-Mother had the sole parental rights over *illegitimate* children: the children who were not counted on paper, in the legal recording systems. F-for-Father was the *sole guardian* of his legitimate children in the event of divorce.

It is hard to imagine a starker example of the feminist truism about the replacement of 'natural' reproduction with self-reproducing legal, political structures: families, patriarchies, societies—and eventually, states.<sup>7</sup> The father is the father on paper, in the structure, in the recording system. Wherever there is paper and law, there, at the origin, is the Father. *Where there is scripture, there is the Father*. The edifices of social reproduction seem to be upheld from the beginning, from the Genesis, by the Uber-Sovereign, the Sky Daddy. In Genesis, this massively aggrandised pronoun, this spectacular He, creates by dividing: skies and heavens; sea and dry land; M and F. As Esther Fuchs famously argued, Genesis, the book of beginnings, is the starkest conceivable allegory of the usurpation of maternal power.

Daughters are rarely registered. Sons proliferate. The matriarchs and the most important wives are barren. They need divinely-assisted IVF. Reproductive power is transferred to the archive and the textual umbilical cord stretching from father to son. God and structure intervene and supply what the merely natural, the merely maternal, cannot. The family of Abraham only really gets going when (mere) birth is replaced by blood sacrifice--hyperbirth, 'birth done better'-- in the near sacrifice of Isaac which is a dress rehearsal for the crucifixion.<sup>8</sup> In Genesis 22, a text markedly devoid of women,<sup>9</sup> a male trinity of God, father

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<sup>6</sup> Blackstone, *Commentaries on the Laws of England*, book 1, chapter 15, section 111, p. 442.

<sup>7</sup> See for example Stevens, *States without Nations*.

<sup>8</sup> Jay, *Throughout Your Generations Forever: Sacrifice, Religion and Paternity*, p. 37.

and son create offspring splattered across the skies, like stars, and bedded down into the land, like sand (Gen. 22.17). It is hard to imagine a more graphic, massive projection of symbolic paternity: a paternity that auto-generates without passing through the body of a woman; a paternity that projects its colonising symbolism up into the heavens, and down into the land.

The homology between Blackstone's pronouncement and the Bible is real—and also illusory. *For Fathers—divine and human—were never as powerful in the Bible as they were able to be in the legal infrastructures of the modern state.* Ever since Sir John Locke triumphed over the hilarious overstatement of biblical paternal power in Sir Robert Filmer's *Patriarcha* (1680), the old Bible has been taken as the original manifesto of absolute patriarchy. In popular myths of secular emancipation, the Bible plays the role of tradition; the foil to secular modernity's progress; the old rule of the (God)-Father; the patriarchal *past*. This image of the Bible as absolute patriarchal power has been so important because it has enabled the modern, secular state to define itself as less authoritarian, less violent, less hierarchical—and committed to (imperfectly realised and usefully vague) goals of equality and being free. In a story rehearsed over and over again by the acknowledged forefathers of modernity, from Locke to Freud, 'The sons, in an act of symbolic, if not actual, parricide, withdr[e]w their consent to the father's power and claim[ed] their natural liberty'.<sup>10</sup> In this potent political mythology, the defining liberty of modernity was born from the dead (decapitated) body of the father-king. But as Carole Pateman and other feminist political theorists have pointed out, *the critique and death of the father (including, especially, the divine father) created a new order of fraternity that excluded women.* Additionally (and this will be crucial for my

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<sup>9</sup> However, it should also be noted that Genesis 22 is 'bookended' by the stories of Hagar and Sarah in Genesis 21 and Genesis 23, as if begging the question of the excluded women.

<sup>10</sup> Pateman, *The Sexual Contract*, p. 93.

argument) the *rise of the private sphere of the family produced an increasingly polarised gender apartheid*, and a more *secure* male-fraternal domination of the public sphere.

‘Secular’ feminist critics have, for the most part, simply repeated the old truism about the Bible as the manifesto of the Big Sky Daddy. Ironically, this assumption *aggrandises* the powers of the old gods and fathers. It also strangely mimics the image of the Bible in the recent rhetoric of Christians who want to see the Bible as the secure bastion of ‘family values’. Feminists and fundamentalists (groups that both had their origins in the nineteenth century) secured the popular image of the Bible as the consolidation of patriarchy and the nuclear family—albeit as part of opposing agendas. Gradually feminist biblical critics have been uncovering a more interesting story of divine/male weakness that has become stronger over the last twenty years. The most important discovery that I felt I made in my first book, *The Prostitute and the Prophet*, back in the mid-nineties, was that projections of divine-male power were fragile. The book came out just as at the same time Harold Eilberg Schwartz published *God’s Phallus*, and already tapped into a growing body of work on divine/male insecurity.<sup>11</sup> Sociologically and textually, biblical patriarchy is ‘fragmentary, not hegemonic’; desired, but never perfectly achieved.<sup>12</sup> Mary Daly’s oft-cited statement that ‘If the God is male, the male is god’ now has a corollary—albeit one less frequently heard. In the strange old texts of the Bible, a male (but strangely desexed) divinity doesn’t divinise the merely mortal father. He, capital H, immasculates him. He makes the male the un-god, the foil for his gigantic masculinity. As Leah Bronner and others have observed (but still within the sequestered walls of feminist biblical criticism) ‘if it is the divine father who is responsible for opening a mother’s womb, *it is not clear at all what role the human father plays*’.<sup>13</sup>

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<sup>11</sup> See for example Sawyer, *God, Gender and the Bible*.

<sup>12</sup> Myers, ‘Was Ancient Israel a Patriarchal Society?’ p. 27.

<sup>13</sup> Bronner, ‘Stories of Biblical Mothers’, p. ?

And/but it is *also* true that the Bible often brutally and anxiously arrogates all the powers to father. Yhwh Elohim murders or metaphorises Tiamat and turns her into ‘the deep’ before getting on (alone) with the beginning of the world. He creates a bizarre c-section birth from the body of Adam in order to make the woman called Life/Eve. But rival stories lurk within her name and when Eve, the ‘mother of all living’ creates the next generation she proclaims ‘I have created/ acquired a man with the Lord’ (Gen. 4.1). Eve’s declaration leaves us asking the same question of Adam that God asks of him: ‘Where *are* you?’ (Gen. 3.9). ‘Where did you go? When did you leave?’ M/F. Paradoxes at the origin. Is the father stealing reproductive powers from the mother, or is the father being pushed from the point of origin? Or both at once? We could summarise the convoluted beginnings in Genesis 1-4 as ‘He (capital He) made him (lower case ‘he’), then ‘her’ but then she and Him made a son without him’. God and M-for Male as primary, and Female secondary; then God and M-for-Mother primary, with the father off stage left. Who has priority? Where does origin begin? M and F both have fantasies of autogeneration without the other. Later, in the first dress rehearsal for the virgin birth, the Lord visits/desires (*paqads*) Sarah and Sarah conceives (Gen. 21.1).

The origin has always been queerer than the cliché of the origin as Male-Paternal—in the Bible, and in popular speech. When I do my little Dale Spender riff in my Feminism 101 classes, one of the key examples I use is ‘to mother’ and ‘to father’. See how the nouns are verbed differently? ‘To father’ is to create, to originate. ‘To mother’ is to nurture, to care. I had always thought of this distribution of parental/creative symbolic labour as quasi-eternal. Now, through a more research, I find that it is yet another example of a recently created tradition. When the verb ‘to mother’ first appeared in English in the fifteenth century, it meant what we now take to be the meaning of ‘to father’: that is, to ‘*be the source or*

*originator of, to give rise to, produce*'.<sup>14</sup> The OED gives a whole range of examples of nouns being *mothered* into being, or causes *mothering* effects. Mothering can happen to all kinds of nouns, from floods, to private masses, to art, to vice, to evangelisation, to books.<sup>15</sup> I think of old Eve, Life, *Havvah*, the mother of all living. I think of Mieke Bal's point about primacy and priority in Eden. Metaphors we live by. Metaphors of life and origin above all.

It is *unheimlich*, given the later clear redistribution of the roles in the home, to see the verb 'to mother' used in senses that we now solely attribute to 'to father'. It is now impossible to think of 'mothering' a book, for example, without thinking of coddling a book, or suckling a book. How strange, this older idea of the mother as cause; shared origin; or first cause. To us, it seems etymologically impossible, especially since feminists accept and repeat the widely-shared truism that 'While a man can possibly "mother" a child, it is unheard of for a woman to "father" a child' (so Nancy Chodorow).<sup>16</sup> But yet how did we miss (or repress) the fact that 'fathering' a child is exactly what women do in law—especially family law and immigration law? As 'to mother' has faded as a verb of creation in common speech, the relation between mothering and origin has been intensified in law. For example, in the recent case of *Nguyen v. The United States Immigration and Naturalisation Service* (2001), the court judged that Tuan Anh Nguyen was an alien: a non-citizen like his mother, rather than a

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<sup>14</sup> All definitions and citations in this paragraph are taken from the *Oxford English Dictionary*.

<sup>15</sup> Examples include: 'This pryuate masse whych mothereth so manyfolde and haynouse vyces' (1548); 'weeping might but mother worser woe' (1850); and 'Which Accident is wholly to be fathered on Adams fondness to please his Wife, and to be mothered upon her Lightness and Credulity' (1674); 'Such books are translated by some humble hand, and fathered or mothered by another of some literary standing (1884); or 'With the valley mothering a flood of waters' (1941); or '[She] wrote the greater portion of a novel which was mothered on Miss Spence' (1831).

<sup>16</sup> Chodorow, *The Reproduction of Mothering*, p. 11.

citizen like his father.<sup>17</sup> The rationale was that ‘the opportunity for a meaningful relationship inheres in *the very event of birth, an event so crucial to our constitutional and statutory understandings of citizenship*’.<sup>18</sup> Note the literalisation of the etymology of nation, from *nascere/natio*, to be born. The Chief Justice asserted: ‘I believe that the State is fully justified in concluding, on the basis of common human experience, that the biological role of the mother in carrying and nursing an infant creates stronger bonds between her and the child than the child than the bonds resulting from the male’s often casual encounter’.<sup>19</sup> A father only becomes a father ‘when he elects to do so’, whereas a ‘woman becomes a mother in both the legal and socialized sense upon the event of birth’.<sup>20</sup> The origin is umbilical; natural (naturalised). In contemporary law, nature over-rides the name and the phallus. The father’s absence in gestation becomes an allegory for his role in the child’s life: a starting point of absence that he may *possibly* make restitution for, but still a primary absence, or fall. As Bruno Latour has pointed out, modern epistemology is caught in an aporia between the idea of the constructed and the given, or the natural: a paradox it resists by separating the world into fact objects (given) and fairy objects (constructed).<sup>21</sup> In this judgement the Mother becomes the fact object (natural), while the ‘father’ becomes a fairy object, a virtual construct, a possible role or social script that few fathers fulfil.

In her beautiful essay ‘Stabat Mater’, Julia Kristeva proposes that we think of New Testament scenes where the son-messiah leaves the ‘natural’ family for the symbolic father ( Luke 2.48-

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<sup>17</sup> The case--*Nguyen v. INS* 533 U.S. 53 (2001)--considered the citizenship of Tuan Anh Nguyen, born outside of marriage to a citizen father and a non-citizen mother, and under threat of deportation on criminal charges.

<sup>18</sup> Rogus, ‘Conflating Women’s Biological and Sociological Roles’, p. 806.

<sup>19</sup> Rogus, ‘Conflating Women’s Biological and Sociological Roles’, p. 810.

<sup>20</sup> Rogus, ‘Conflating Women’s Biological and Sociological Roles’, p. 809.

<sup>21</sup> Bruno Latour, *On the Modern Cult of the Factish Gods*.



49; John 2.3-5; John 19.26-27) as a *biblical typology for all our social structures of filiation that rest 'not with the flesh, but with the name'*.<sup>22</sup> The movement from the flesh to writing leads to violent exclusions: for example symbolic filiations where daughters and mothers are sidelined in reproduction *and* cultural reproduction; or the supersession of the Jews, who, stuck in the flesh, cannot join the new community of the name. But, positively, it also creates wild and creative possibilities for new families and solidarities that transcend essentialised racial or sexual markers. The Old and New Testaments experiment with wild forms of the family, including the nation born from the woman who had sex with her father-in-law when disguised as a prostitute; warring twins (both with a highly plausible claim to the origin); the surrogate mother/grandmother; sons made from stones; those who leave the flesh family and make new family by being 'born again'. We assume that since the 1960's we have been thinking for the first time about new permutations of the family: ivf babies, surrogate mothers, foster families, single parent families and so on. But *types* of these new-old recreations of the family are there in biblical foundation myths. As Marcella Althaus-Reid points out, the Bible's sexual origin stories are 'chaotic, unpredictable, and immoral. That is why we like them'.<sup>23</sup> We are drawn to the families in the Bible because of their perversity, their insecurity, their fluidity—precisely not their normativity. The strangeness of biblical families is so pronounced that is surely deliberate. But it is also accidental, a reflection of the difference between ancient cultures and modern states. In one of many striking observations in a troubling book,<sup>24</sup> Jacqueline Stevens observes that there can be no control and regulation of the family and nationality without the intricate recording systems of modern states. *'Absent marriage records, the story of origins would be...haphazard, subject to fakery, invention and*

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<sup>22</sup> Kristeva, 'Stabat Mater', p. 164.

<sup>23</sup> Althaus-Reid, *Indecent Theology*, p. 23.

<sup>24</sup> I discuss my problems with Stevens' book on p. x below [to be added at proofstage].

*obfuscation*'.<sup>25</sup> Biblical foundations are 'haphazard', overtly contested and convoluted. This is because—or at least partly because—in the Bible the family/the origin is subject to a form of writing and story-telling that is nothing like the meticulous records of family data held at Somerset House in the UK.

In Britain, the meticulous legal recording of families came in the 1830's, with the *Births and Deaths Registration Act* of 1836 and the establishment of the General Register Office, later merged with the Government Statistical Service. (In the USA, records were being kept in a piecemeal fashion by the mid-1800s by local health departments in a few large cities, but most states only developed registration laws in the twentieth century.) *In the same decade that family records were being made official, the Custody of Infants Act of 1839 established the so-called tender years doctrine, which gave custody of the children under seven—and then, from 1873, under sixteen-- to the mother.* In the 1830's, the same legal doctrine was established on the other side of the Atlantic, most notably in the landmark judgement *Helms v. Franciscus* (1830). In Britain the extension of the 'tender years' doctrine in 1873 was followed by the introduction of a penalty for not registering all births just two years later in 1875. Now that families were recorded by law, they could be monitored and the duties of M and F assigned and controlled by the state. From 1873, it was established that children belonged to the mother as long as they were children: that is, under the age of sixteen. Only if an M defaulted on the virtues of M-hood would she be forced to forfeit these natural advantages and prerogatives of motherhood. In the nineteenth century, the anxiously inscribed exception was, of course, the *adulterous M*.

The primary right of a mother to her children was never argued on the grounds of right or equality, but 'nature'—and primordial rights enshrined in nature. This is still the case. We

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<sup>25</sup> Stevens, *States without Nations*, p. 163.

inherit legal systems in which women strategically made inroads on the absolute right of the father, through strategic supplications to/against the law from the place of maternal softness and grace. According to the judgement in the Maryland case *Helms v. Franciscus* (1830): ‘The father is the rightful and legal guardian of all his infant children; and in general, no court can take from him the custody and control of them, thrown upon him by the law, not for his gratification, but on account of his duties, and place them against his will in the hands even of his wife....Yet even a court of common law will not go so far as to hold nature in contempt, and *snatch helpless, puling [sic] infancy from the bosom of an affectionate mother, and place it in the coarse hands of the father. The mother is the softest and safest nurse of infancy, and with her it will be left in opposition to this general right of the father*’.<sup>26</sup> Affectionate bosom versus coarse hands. ‘Hail mother, source of love!’<sup>27</sup> New dichotomies of M and F. In Britain, the new legislation was softly and strategically forced by the activist and pamphlet writer Caroline Norton (1808-1877), whose campaigns led to the passing of the Custody of Infants Act (1839), the Matrimonial Causes Act (1857) and the Married Women’s Property Act (1870). Caroline left her husband in 1836, and her husband sued her close friend Lord Melbourne, the then Prime Minister, for adultery or ‘criminal conversation’. Though the jury rejected the claim, Caroline was unable to obtain a divorce and was denied access to her three sons. Though she was so widely perceived as a victim of injustice that she used as the model for the fresco of *Justice* in the House of Lords, her reputation, like that of Mary Wollstonecraft, was forever dominated by sexual scandal, and the accusation of ‘adultery’ stifled her major contribution to legal reform. Strategically, in her soft-forceful campaign, she took up the stance of the Syro-Phoenecian or Canaanite woman (cf. Matt. 15.21-28; Mark

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<sup>26</sup> *Helms v. Franciscus*, 2 Bland Ch. (Md.) 544 (1830). Accessed at

<http://law.justia.com/cases/alabama/supreme-court/1981/398-so-2d-686-1.html> (7.7.2016)

<sup>27</sup> Giovanni Battista Pergolesi, *Stabat Mater*, 1736.

7.24-30) scavenging for crumbs under the acknowledged table of paternal sovereignty, and drawing on the Pauline trope of the law versus mercy, spirit, or grace. Prayers to the Father might just result in grace. ‘The natural position of women’, wrote Caroline, ‘is inferiority to man. Amen! That is a thing of God’s appointing not of man’s devising’.<sup>28</sup> The boundaries of the thinkable and the conceivable could only be tinkered with from the vantage point of tenderness.

The gift came in a similarly paternalistic spirit. In the House of Commons debate over the Custody of Infants Act in December 1837, one MP stated that ‘common sense, and justice, and humanity’ dictated that ‘fair protection should be afforded by the stronger sex, who make the laws, to the weaker sex, for whom the law is made’.<sup>29</sup> Those who opposed the tender years doctrine and new divorce legislation protested that the innovations were ‘antichristian’ and ‘immoral’ and would break down ‘the last and strongest and only effectual prevention still existing against separation (viz. the certain assurance in the mind of every wife that if she does leave *ipso facto* she will lose access to her children)’.<sup>30</sup> The ‘implied penalty of losing a child’ protected the ‘institution of marriage, the bond by which domestic morality was

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<sup>28</sup> Norton, *A Letter to the Queen*. In the same text she wrote of her husband, to whom she was widely perceived to be ‘unequally yoked’: ‘I never pretended to the wild and ridiculous doctrine of equality. I will even hold that (as one coming under the general rule that the wife must be inferior to the husband) I occupy the position *Uxor fulget radiis Mariti*. I am Mr Norton’s inferior, I am the clouded moon of that sun. The statement may have been strategic, ironic, or a declaration of her true public beliefs (beliefs which had to be within the limit of the believable and the thinkable in order to make any kind of public meaning).

<sup>29</sup> Mr Leader, MP, House of Commons, December 14, 1837, cit. Barrow (ed.), *The Mirror of Parliament*, p. 740.

<sup>30</sup> Unnamed Member of Parliament during the debate on the third reading of the Custody of Infants Bill (1838). cit. John Wroath, *Until They are Seven*, p. 105.

cherished and preserved'.<sup>31</sup> But, fears notwithstanding, grace prevailed. Because He had been properly approached, the sovereign father-God *was* gracious to mothers who (in the words of Lord Lyndhurst) 'have no voice whatever in making the law, whose interests are entirely in the hands and at the mercy of the law-makers...and who ask merely for protection against the cruelty and injustice which may be (and I grieve to say is too often) perpetrated by a brutal tyrant, fortified by the letter of the law'.<sup>32</sup> The individual father's discretion (which was potentially tyrannical) was overruled by the greater benevolent Father, the Law. 'Upon hearing the petition of the Mother of any Infant or Infants being in the sole Custody or Control of the Father' the Lord Chancellor or the Master of the Rolls shall, 'if he see fit... make an Order for the access of the Petitioner to such Infant or Infants, at such Times and subject to such Regulations as he shall deem convenient and just' and 'if such Infant or Infants shall be within the Age of Seven Years to make an Order that such Infant or Infants shall be delivered to and remain in the Custody of the Petitioner until attaining such Age'.<sup>33</sup> This is a transitional statement. The Mother prays to the Lord/ the Lord Chancellor for access. But children under seven belong to the mother. They 'depend more on the tender watchful care of the mother than of the father'.<sup>34</sup> When they are under the age of seven—and then, from 1873, under the age of sixteen—the mother no longer needs to pray.

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<sup>31</sup> Sir Edward Sugden during the debate on the third reading of the Custody of Infants Bill (1838) cit. John Wroath, *Until They are Seven*, p. 105

<sup>32</sup> Mr Leader, MP, House of Commons, December 14, 1837, cit. Barrow (ed.), *The Mirror of Parliament*, p. 740.

<sup>33</sup> *An Act to Amend the Law Relating to the Custody of Infants*, 1839. Accessed at [http://hansard.millbanksystems.com/lords/1839/jul/18/custody-of-infants#s3v0049p0\\_18390718\\_hol\\_62](http://hansard.millbanksystems.com/lords/1839/jul/18/custody-of-infants#s3v0049p0_18390718_hol_62) (7.7.2016)

<sup>34</sup> Ernestine Rose, Speech at the Second National Suffrage Convention, Worcester Massachusetts, October 15-16, 1851, in *The Concise History of Woman Suffrage*, p. 110.

In the nineteenth century, a new symbolic edifice of motherhood was ‘hatched’ in both senses of the word: as a strategic plan, and as a newly-born concept. *The new segregated senses of ‘mothering’ and ‘fathering’ were born at exactly the same time that mothers were petitioning for access to their children on the grounds of natural feeling and an exclusive relationship to care.* The OED lists the first uses of mothering as caring in 1863 and 1878.<sup>35</sup> The affective, specialist verb ‘to mother’ was now exclusively reserved for care, and with an exclusive claim to care. The antimony Law versus Nature started to appear everywhere—more or less forcefully. In the work of Elizabeth Cady Stanton, the official foremother of feminist biblical studies, the fundamental premise is that women’s rights were ordained by ‘the laws of nature and of nature’s God’ and that ‘Nature has clearly made the mother the guardian of the child; but man, in his inordinate love of power, does continually set nature and nature’s laws in defiance’.<sup>36</sup> As the feminist movement adapted the old liberal attack on the father-sovereign, so it took up its own version on the old deist attack on scripture from the vantage point of natural law. Women’s rights were ordained by nature and the divinity in nature, but repressed by the falsification and the overwriting of scripture and the law. In Cady Stanton’s version of the argument, which was more forceful than Caroline Norton’s (and too forceful for many of her contemporaries), nature was the primordial force of justification, that could rise up against theology and scripture. In later versions of the argument from nature, the Mother-Female became ‘closer to the body, to “nature” and all things nurturing’<sup>37</sup> in arguments that came perilously close to those of conservative thinkers who had their own reasons for seeing

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<sup>35</sup> ‘You would like to take Lizzie Reed into our house, for a time, and mother her till something can be found for her’ (1863); ‘Some mothers “mother” their children too much’ (1878) ‘The weak churches do feel deeply the need of brotherhood. They want to be mothered’ (1889).

<sup>36</sup> Seneca Falls Declaration of Rights and Sentiments, 19-20 July 1848, accessed at <http://ecssba.rutgers.edu/docs/seneca.html>

<sup>37</sup> Segal, *Is the Future Female?*, p. ix.

the feminine as the *nicer* counterpoint to the ‘unbridled ambition of the phallus’.<sup>38</sup> This neutered, nice, nature lost its connection to bloody, competitive nature, and also insistent, insurgent, primordial force.

This gracious concession to women’s maternal nature (not women’s rights) and feminine softness, still shapes family law. Despite years of working in the disciplines of Biblical Studies and Religious Studies (which often live down to the popular caricature of patriarchal Religion), I am staggered by the paternalism of the law. The book I have used to research the history of the tender years doctrine is written by a former senior family judge for Hampshire and the Isle of Wight and in his description of Caroline Norton he uses sentences such as: ‘At 16 she was much more attractive than when younger, her figure had filled out and she had a very graceful neck’.<sup>39</sup> If not a lovely face, at least a lovely neck. The author describes Caroline’s diminutive stance as strategic softness: ‘It was more effective to play the helpless little woman needing a knight in shining armour than to be a strident feminist seeking equality’: a statement that is surely correct.<sup>40</sup> But, oblivious to the irony, he consistently performs the paternalism that still governs British family law. My partner was truly shocked by the paternalistic and protective demeanour of the sixty-five year old judge who also seemed strangely flirtatious with his ex-wife. In his judgement, the judge fully acknowledged that the daughters clearly loved F and that F loved them, but he pronounced that with time he would ‘get over it’. He condemned F for being ‘over-emotional’ and hyperbolic in describing his profound attachment to his children and their attachment to him. Law must have its reasons and in this case the reasons for allowing the children to move 4000 miles away from

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<sup>38</sup> Scruton, ‘The Case Against Feminism’. Lynn Segal makes the point that the new maternal revivalism echoes the arguments of writers like Scruton in *Is the Future Female?*, p. ix.

<sup>39</sup> Wroath, *Until They Are Seven* p. 66; p. 64.

<sup>40</sup> Wroath, *Until They Are Seven* p. 125.

their father were M's difficulty with her recent return to work, and F's new girlfriend (myself). No deep connection between the mother-and-child without the risk of the mother-as-child. It is inconceivable that these rationales would have worked if my ex-husband had gone to court looking for primary custody of my son, or if my new partner had sought, for the same reasons, to move the children 4000 miles away from their M.

The judgements made in my partner's case made me think of that strange old story of King Solomon presented with the two rival parents, in this case rival mothers (1 Kings 3. 16-28). For no clear apparent reason, the starting point in my partner's case and many others is that the child cannot be cut in half—or shared--and so a momentous decision must be made. In our case the CAFCASS ('Children and Family Court Advisory Support Service') officer presented the very idea that the children live between two homes as a scandal: a crazy idea. Had the children stayed in the UK, F would have received the allotted time of one weekend every fortnight, which is the standard allocation and the one proposed by M. Even in the USA, where the tender years doctrine has been challenged by the fourteenth amendment,<sup>41</sup> and some states now promote 'shared custody', 'shared custody' can still mean up to seventy percent of the time with one parent, while states boast that joint custody statistics are (for example) now as high as ten or twenty per cent. 'The liar, in her bitter jealousy, exclaimed, "It shall be neither mine nor yours—divide it!"'. Then the King responded: "Give the first woman the living boy...She is his mother" (1 Kings 3: 25-27). Division is not possible. The king gives the whole body to the true mother. In the UK, the reigning assumption is still, very firmly, that one parent must get the whole child, or the bulk of the child, while the other parent makes do with a remnant, an arm or a leg. The exponential rise of divorce since the late 1960's, has regularly catapulted Law into impossible trials of the love between children

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<sup>41</sup> Introduced in 1968, the key phrase in the fourteenth amendment is 'equal protection of the laws' which has now been used in a number of landmark cases.



and two parents: uncomfortable terrain for law, which is more at home in trials of criminal acts, or defaults on services or debts. Who can judge love? Law is potentially embarrassed. It likes to present trials as empirical-logical tests, based on evidence. But now judges find themselves pronouncing on greater and lesser loves; greater and lesser attachments and pains. In making these kinds of judgements, law inevitably goes above and beyond rational judgements into the realm of King-like, God-like, Schmittian decisions. Only habit or routine can offset the strange theological undertones to the 'secular' court trying love, like King Solomon testing the love of the two women, or the God of Abraham testing Abraham's faith.

The old story in 1 Kings 3 fantasises an extreme test (proposing to cut a child in half and then gauging the reaction of both prospective parents is not an experiment that could be taken up in a modern court of law)--and a gratifyingly easy solution. By threatening to kill the child the king attempts to draw out the true mother's burning compassion/love/womb (*rehem*).

Luckily the imposter mother plays her part in the most implausible way. 'Cut him. Kill him. Neither of us will have him.' She would murder him; or let Solomon murder him. She would rather the child were dead. Fortunately, an ambiguous decision divides into a simple decision between manifest non-love (in fact manifest cruelty) and sacrificial, self-giving love. The king can decide without guilt. The false mother is, like so many biblical and legal foils, an unbelievable construction, but one profoundly desired by the text. Terrified of appearing to make a Schmittian decision, a God-like pronouncement on the family from above, Law invokes the cliché of the mother as 'the softest and safest nurse of infancy':<sup>42</sup> a truth now consolidated by over a century of repetition. The decision is rarely as easy and as guilt-free as Solomon's. One parent is not an imposter parent, a kidnapper. Nor is either party entirely without love or attachment to the child, or they would not be in court. No-one imagines that a

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<sup>42</sup> See the judgement in the landmark case *Helms v. Franciscus*, (Maryland 1830), n. x above [to be added at proofstage].

parent can live without her/his children without pain. But a century of the tender years doctrine makes the ‘tough’ mother who can bear to live without her children unnatural, unthinkable: impossible. This mother would be the un-mother, the unnatural mother; the one who causes irreparable harm to the child who cannot be pulled from the breast. Every legal repetition of the decision for the mother consolidates the cliché of soft maternal nature. The hard decision is played off against the impossible one. And numerous examples seem to suggest that the anxiety generated by the decision against the father has created a new myth, so that Law does not appear cruel. Like the criminalised mother in the Solomonic story, fathers can (more) happily leave their children, so we are told. In fact they frequently abandon their children of their own volition. Many fathers feel a sigh of relief at being liberated from the labour/joy of ‘hands-on’ care.

Famously, the old Fathers like Aristotle and Paracelsus disseminated strange old myths of paternal origin, where the father autogenerates and the mother-receptacle only incubates. In these myths, the father was clearly the origin. But being the origin was not the Father’s *only* job description, as it often is today. We search the old archives in vain for the new and recent myth of the father, in which the father (not to put too fine a point on it) fucks and fucks off because he lacks a primary umbilical attachment to his children. As the old myths of an exclusively paternal origin relied on ancient theories of biological procreation, so this new myth turns the biological distribution of labour into an allegory of the relative interest of the two parents in the child. But this mythology is very new and very strange. The old classical and biblical myths are full of stories that foreground and depend on the father’s profound love for the child: Agamemnon; Theseus; Jephthah; Judah; David wailing over Absalom; Daedalus mourning Icarus; Jason, whose *refusal to leave without his children* provokes Medea’s world-destroying fury; the God-Father agonising over his death of the son; the doting father of Cinderella whose death exposes the daughter to the stepmother’s jealousy

and rage.<sup>43</sup> According to legend, the painter Timanthes argued that there was no greater expression of suffering than Agamemnon's face, which is why it could never be looked on directly, and had to be covered with a veil.

Though the facts and the mythologies vary between different social and ethnic groups and different legal jurisdictions (I suspect that the myth of the absent father is strongest in countries where divorce law and family law is most conservative, and where parental leave is not shared), the *anxious* mythology of the father who merely 'fathers' sexually and leaves so easily is a recent myth, forced by recent and intense changes in the family in the so-called 'West'. I now hear them everywhere—on the school run, at dinner—these implausible stories of hapless F's. One professional woman, feeling a need to justify why she had the children all the time, except for a weekend every fortnight, told me that her ex had no idea what to do with the children, and only ever took them to the supermarket on 'his' days. I did not ask any questions or tell my story. She simply offered the justification, as if it were demanded from her from some elsewhere. In the disturbing and awkward final caveat to the Netmum post, cited above, M anxiously adds that she is not seeking majority ownership, but rather seeking to protect the children from an F who is (implausibly) too close and too distant, too

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<sup>43</sup> I imagine a conversation here with the much-missed Grace Janzen. I imagine that she wants to remind me of her powerful statements about the necrophilia of philosophy and Christian theology, and the need for a new philosophy and theology of natality. 'Why in so many of these scenes is father's love is shown at the point where the child is threatened with death?'. I note this, and still second it. And/but it now strikes me that it is not surprising that the father's intense love has only been represented in male pietas, not male nativities, because—certain figures of Jesus as the male mother notwithstanding—cultural symbolism has found it hard to imagine the father's attachment to the child in figures of the child on the male breast.

smothering and too critical, too M and too F.<sup>44</sup> At dinner, a barrister friend told us that he had been taught in courses in family law that 95% of fathers didn't want any part of childcare, making my partner a rare middle class anomaly. He said that most fathers don't even bother to come to court. I spluttered into my beer, and told him about all those curious rites of testimony about the hands-on father, with his kayak, who took the children to school and nursery, brushed teeth (there was also much discussion of brushing teeth), but didn't put in as many minutes braiding hair. Whence this new tradition? It would be desperately hard to read stories of fathers in the old classical, biblical and folk/fairytale traditions and conclude that 95% of fathers don't care.

This recent myth of absent fathers has two origins: statistics (or more accurately the lack of statistics) and social-legal necessity and desire. The love of so many F's for their children is not showing up on the statistical radar (and therefore, in a world where truths are made by metrics, does not exist) because solicitors are cautioning F's against losing their children *and* losing their money, or just losing their children, as was explicitly said in my partner's case. It took all our financial resources to back our decision to testify to the truth of his family (all *four* members of his family) which was totally at odds with the legal myth. We have no illusion that we made even the tiniest dent in the statistics. But we can testify that the exorbitant court costs are well beyond the reach of most F's. The lack of family court statistics, reinforcing the myth of the absent father, is consolidated by social and legal edifices that want and need this empty space. New stories of the non-father need to be told,

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<sup>44</sup> See the citation from Netmums above, p. x [to be completed at proofstage]. It makes me deeply uncomfortable, this caveat, where the Netmum, anxious to defend herself against assertions of ownership, suddenly interjects a belated claim of 'abuse' or pseudo-abuse.

and told repeatedly, to allow relatively new (and potentially precarious) social and legal structures to make sense. Fortunately, it turns out (as it has also luckily turned out in the cultural histories of the limits of the female) that the losing figure has never wanted what he/she stands no chance of getting. Luckily we all want the prevalent social-legal structures: the losers as much as the winners. Few women have (until recently?) had the desire or the ability to sit in the Supreme Court, or be Governor of the Bank of England, or to be a Bishop or a President, or to work in a Theology and Religion Faculty, or to participate in the workplace to the point where they deserve equal pay—we have been told. Through repetition, the cultural stories we tell achieve the effect of ‘it is written’ and ‘it is natural’. Law, like the Bible, carries an aura of tradition, naturalising the grounds and etiologies of the societies in which we live.

As feminist biblical scholars have known at least since Cady Stanton, the Eve myth is a myth of ‘justification’,<sup>45</sup> produced and replicated by particular social structures that needed her. We should be equally sceptical about the late modern myth of the origin of the family, with the father who is only there at the origin and who cannot wait to break out of the oppressive garden of the family, either because he is tempted by the forbidden fruit of another woman, or because he is running for the commuter train. The Eve myth is ludicrous, but it is *believed* because social, political and religious structures need this profound asymmetry. The father who cannot and does not want to parent is as useful as the old gullible and weak Eve was/is for modern societies which needed (over and against emergent mantras of ‘democracy’ and ‘equality’) to reserve social and religious public roles for the male. Always explore the reverse myth; the unwanted one. Who wants and can accommodate an Eve who seeks wisdom and who is the mother of all living? And who wants and can accommodate the father

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<sup>45</sup> Cady Stanton already recognises that Eve’s punishment serves to justify existing social structures. Far from being in a pre-social utopia, Eden is very firmly socially located.

who wants to co-parent, and stay? The father who leaves is often far less of a problem than the father who wants to stay.

An aside: one of the hit TV series in the UK last year was *Dr Foster*.<sup>46</sup> The series opened with Dr Foster being vilified by some members of her small-town community for being a working mother. Her husband was more ‘hands-on’; closer to their only beloved son. She felt jealous of her husband and distant from her son. The husband had an affair with a younger woman. Dr. Foster plotted her revenge. This culminated in her returning to the family home, like a female Abraham, and allowing her husband to believe that she has killed her/their only beloved son. In fact she had only hidden him. But to torment her husband, she brandished a lock of the son’s hair. Her husband, mad with grief and anger, lunged at her and pushed her against the window. The police were called. The police came. In the next scene it became clear that the father had been convicted of assault and was no longer allowed near the good doctor and her son. Dr. Foster was able to enter a post-divorce life without having to contemplate a moment away from her son. Luckily, the father had a new baby on the way with his girlfriend. New girlfriend; new shiny children, like Job. F was a little sad, but reconciled. In a final scene he passed his ex and his once-beloved son on the other side of the street. He seemed to have nothing but wistful longing as he looked at his now inaccessible son.

The series haunts me. I suspect that its popularity had something to do with its overdetermined plot line, in which the common myths are reinforced and (guiltily/anxiously?) undermined. Optimistically, I wonder if the conflicted storylines point to trouble brewing around all the clichés, myths and guilts that we ascribe to M and F. Surely

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<sup>46</sup> The series was written by Mike Bartlett and produced by Drama Republic. It aired on BBC1 in September 2015.

one of the attractions of this highly popular series was the extreme gratification of M's wish-fulfilment fantasies—but this was coupled with an awareness that it is not/should not be so easy for her to have exclusive rights to her son, particularly given the fact that she has (in the views of some) compromised her role as M by working outside the home.<sup>47</sup> *She* is a cold (?) working mother and/but should not be accused of being a cold working mother since she is only working to support her son. He is guilty for cheating (the bastard); and/but the guilt and punishment that he must bear is so excessive that it seems unjust. One way of reading the series is as an affirmation of the story of the poor mother who has been cheated on, and rightly gets the child (by compensation? in return?). But why make the father so loving, so devoted? And why give the story the form of a strange modern update of the sacrifice of Abraham, but with the gender roles reversed? The biblical story of Abraham's sacrifice replaces birth with sacrifice, 'birth done better',<sup>48</sup> and makes the primary relationship Father and Son, not Mother and Son. Conversely, in this modern 'sacrifice' story, the scene of almost-killing or mock-killing secures Dr Foster's primary relationship to her son. Through this moment of virtual killing, *their* son becomes *her* son. As surely as God chooses for the Father in the story of Abraham's sacrifice, so the decision for the Mother is declared by the narrator-scriptwriter and the state. But there are suggestions of mental illness, obsession, and narcissism around our heroine. And how can Dr Foster be excused, when son-sacrificing Abraham is such a hate figure for modernity? Crucially, Dr. Foster does not have a husband who wants to leave, but successfully makes one.

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<sup>47</sup> Compare the anxious sentences from the 'Netmum': 'I'm now worried that my full time working might jeopardise my custody rights if things went that far. I already work from home one day a week, ensure I'm the one that attends parent teacher meetings, takes her to the doctor, gets shoes fitted etc etc. but I worry about whether this is all enough'.

<sup>48</sup> Jay, *Throughout Your Generations Forever*, p. 37.

Contemporary feminist work on the mother is full of the absent father –or, more eerily, the father who has not yet left, but must be made to leave. Take for example Martha Fineman’s *The Neutered Mother, The Sexual Family, and Other Twentieth Century Tragedies*, written in 1995, or Jacqueline Stevens’ *States without Nations: Citizenship for Mortals*, published in 2010. Both books offer powerful and timely visions of family and nation freed from congenital ‘blood and legal ties’. Fineman makes the intriguing suggestion that our primary relationships should not be organised around adult sexual relationships and marriages, which are easily terminated, but around the more permanent relationship between parent and child, reflecting law’s *official* stance that family law is now about the child, and the parent-and-child. For Fineman, parent-and-child must be understood in a way that is free from all sexual-biological ties. Except when it comes to the mother. The mother’s relationship to the child remains primary-biological, but not sexual. She is in effect the virgin mother. Fineman strenuously argues *that the mother must not be ‘neutered’* or robbed of her specific femininity in the interests of gender-blind equality, because this will have ‘emotional as well as economic costs for Mother’.<sup>49</sup> She then goes on to give examples of the bad consequences that might follow, including ‘custodial mothers’ being penalised if they resist visitation by the father(why in this radical revision of the family, not revisit ‘custody’ and ‘visitation’), or women being compelled to seek the agreement of their partner or the courts for any relocation that would impact on his access to the children.<sup>50</sup> Jacqueline Stevens offers a similarly emancipatory-conservative revisioning of the nation and the family. How strange to valorise menstrual blood and gestation, while rejecting racial mythologies of blood and symbolic dynasties built on sperm. No to dynasties of sperm or blood. Yes to the emancipatory conjuring of solidarities that transcend blood and DNA. But, strangely, yes to

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<sup>49</sup> Fineman, *The Neutered Mother*, p. 89.

<sup>50</sup> Fineman, *The Neutered Mother*, p. 79.



the holy mother and to the symbolic power of (menstrual) blood, umbilical cord, milk (and tears?). The newly-made family is to be organised around the one secure origin, the mother, on the grounds that ‘every child has one mother: the person who gave birth to him or her’.<sup>51</sup> According to Stevens, the mother, who effectively auto-generates, should be the one to create the new virtual family by inviting those whom she elects to be the carers and financial providers for her child. The ‘father’ may be asked, but he has no right to be included, *qua* father. In an argument that is desperately out of date—but that would have been absolutely correct in the early nineteenth century-- she argues that the ‘father’ is a projection of uncontested power that needs to be unmasked. These days you don’t need to go to Lourdes or Guadalupe to get a Marian apparition. Law, and even feminist theory, is full of images of the virgin mother and reinscriptions of the maternal origin, and the maternal mystique.

Just as the feminist image of the Bible uncannily mirrors the rhetoric of evangelicals and fundamentalists, so, around the mother, feminist ‘critique’ strangely mimics and enforces the status quo. Both arguments are clearly made in the context of recent challenges to the legal preference for the mother, mounted from principles of equality; and both repeat the division between Mother (given/natural; fact object) and Father (construct; fairy object) that we noted in the case of Tuan Anh Nguyen. Both works point to the awkward ongoing *presence* of the father, and the perceived threat of the male mother—which, Judith Butler notwithstanding, is something that must now be very actively resisted. Gender may be ‘a free-floating artifice’; and ‘masculine’ may be able to attach itself to a female body, and ‘feminine’ to a male body—but not when it comes to the mother.<sup>52</sup> The mother must not be troubled. I think how rarely I have seen arguments for the queer mother. To find her you have to go back to the

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<sup>51</sup> Stevens, *States Without Nations*, p. 182.

<sup>52</sup> Butler, *Gender Trouble*, p. 6.

1970's or the 1980's, before the emergence of queer theory: for example to Nancy Chodorow's argument in 1978 that mothering must be liberated beyond the female body (and that women's emancipation depended on this); or Lynn Segal's argument in the 1980's that:

Mothering is not determined by consciousness, but consciousness by mothering, to paraphrase Marx and Engels. Young children's characteristic joy and delight in the world, their laughter and tears, the great love they offer the person or persons who "mother" them, their vulnerability, their dependence, the great demands they make on us, could hardly fail to affect our consciousness and conduct dramatically....Many women do not display the characteristics of "maternal thinking" (idealised or not) until they begin to mother. And even then, they may not.<sup>53</sup>

Conversely, today, there are only isolated examples of 'queering maternity', such as Mielle Chandler's claim in 1999 that we are all multi-gendered, and can identify beyond the two-gendered system, mother and non-mother, responsibility and non-responsibility, stranger and kin.<sup>54</sup> Few contemporary feminists are prepared to put 'to mother' in as heavy inverted commas as those used by Lynn Segal. Judith Butler's partner, Wendy Brown, is very careful to put scarequotes around "natural" when she writes of a "natural" commitment to caregiving', and<sup>55</sup> to talk of 'socially female' role that can of course be performed by 'stay-at-home' fathers, or queer parents.<sup>56</sup> But these inverted commas seem light, technical, compared to the heavy inverted commas that Lynn Segal is prepared to put around 'mothering'. And Brown certainly valorises, more than criticises, the sacrificial work of the *femina domestica*,

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<sup>53</sup> Segal, *Is the Future Female?*, p. 149.

<sup>54</sup> Mielle Chandler, 'Queering Maternity', p. 22.

<sup>55</sup> Brown, *Undoing the Demos*, p. 102.

<sup>56</sup> Brown, *Undoing the Demos*, p. 107.

as opposed to the rapacious Hobbesian, neo-liberal *homo oeconomicus*, gendered male. Her Manichean social parable strangely occludes all those men who work in low-paid or ‘caring’ professions as well as all those men as well as women who would like some time out of the neoliberal rat-race to spend a little more time ‘at home’ with their kids. Ironically, she brackets out the stark effects of neoliberal globalization which has ‘reduced the economic power of working- and middle-class white men to that of working class and racialized wo/men’, as Elizabeth Schussler Fiorenza points out in her essay in this volume, and she enforces the gender apartheid that has been consolidated around heterosexual couples at the point where they have a child. M for Male and F for Female get to be far queerer than M-for-Mother and F-for-Father. The child changes everything. And the cultural stereotypes are so entrenched that only the legal conundrum of homosexual parting couples has any possibility of making parenting truly queer. A Solomonic figure would truly be needed to decide between two F’s, or two M’s; two wombs or none. Strangely, the reflex, trademark feminist move that deconstructs the ‘feminine’ as a construct, a ‘morass of metaphysical nonsense’ closes down reverentially around the figure of the holy mother. We have moved a long way beyond the dismissals, in the 1940’s, 1950’s and early 1960’s of the confining role of the mother, for example in the work of Simone de Beauvoir, Shulamith Firestone, Juliet Mitchell, or Betty Friedan. Today weak gestures are likely to be made to the idea that the ‘maternal’ *can* be a confining construct—but, in the special case of the mother, the special relationship between sociology and biology tends to be mostly valorised, with a gesture towards criticism. ‘Because she is a mother in the biological sense, she is also a mother in the sociological sense’<sup>57</sup> pronounces a feminist legal commentator on the case of Tuan Anh Nguyen. But the nod to the argument that women are (also) trapped by the concept of the mother, which gives

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<sup>57</sup> Rogus, ‘Conflating Women’s Biological and Sociological Roles, p. 803.

the argument legitimacy, is undermined by a total enforcement of the status quo and the assumption that, legally, the mother should be regarded as the origin and the ‘natural’ parent.

Like most gifts of grace ceded by dominant forces, the new caveat inserted in the Law of the Father in the 1830’s was given at a time when it made very little difference. F was legally deposed (or rather graciously stood down, at a point in history when this standing down did not have serious social-demographic consequences) from the place of primary care for the children. Thus, technically, M became the dominant parent, insofar as to be parent, to be mother or father, depends on having a child—and the Mother, not the Father, would henceforth have the child qua child. But there was no sense that the Father would somehow lose his status as parent because, in practise, there were so few divorces, and very few drastic separations of F from what made him an F: the child. The cases debated in the nineteenth century all involved wealthy mothers, from among the few members of the elite that had the persistence, and the funds, to divorce.<sup>58</sup> In the UK, until 1857, *divorce was a theological matter*, handled by the ecclesiastical courts and Parliament. In a three-hurdle process, the plaintiff had to obtain a judgement of adultery in the Court of the King’s Bench or the Court of the Common Pleas; then apply for a *de facto* divorce (a separation *a mensa et thoro*) in the Consistory Court; and then finally apply for a divorce by Act of Parliament. In the one hundred and fifty years between 1700 and 1857 there were only three hundred divorces by Act of Parliament, which is hardly surprising, given that the process was so arduous and costs were between £500 and £2000 (the equivalent of £50,000 to £200,000 today). Bigamy was relatively common, and often regarded indulgently by judges. Condemning one Mr Hall to

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<sup>58</sup> In Britain, the two key figures were Henrietta Greenhill and Caroline Norton. Henrietta was widely perceived as the virtuous woman, unjustly deprived of her children by her husband who was having an affair with a prostitute, forcing her to leave the family home. Caroline—a vivacious public figure, tarnished with sexual slander-- capitalised on the sympathy for Henrietta’s recent case, as well as her own.

just one day's imprisonment for bigamy in 1845, the judge gave a long sardonic account of the legal action that he should have taken (including costs) if he wanted to be legally separated from his wife, stating that divorce was clearly impossible for the poor.<sup>59</sup> As only the wealthy elite could afford to blaspheme, so only the wealthy elite could afford to divorce. For the few who could afford it, the divorce process could only begin with a suit for 'adultery' or, as it was also known, 'criminal conversation'. As in the Bible, adultery was figured as feminine (Numbers 5.11-31; Jeremiah 3; Ezekiel 16; Hosea 1-3; John 8; Revelation 2); a violation of a man's female property; sex with another man's woman. Adultery was 'the greatest injury one man could inflict on another'.<sup>60</sup> The civil tort of *crim. con* was based on restitution for the damage done to the male cuckold by another man.

The Matrimonial Causes Act of 1857 marked a partial detheologisation and simplification of divorce. Divorces were now centralised in one divorce court, the High Court in London. Controversially, the wife, as well as the husband, could now petition for divorce. But there were clear problems with allowing women access to the concept of 'adultery' as the established ground of divorce. The cuckold, though a shamed figure, was *male*. A woman could not have equal access to the position of cuckold, by definition. The ridiculous proposal that 'the wife should have the same relief on account of the adultery of the husband that the husband has on the account of the wife' was stridently resisted on the grounds that this would be too tough on husbands who, having been 'a little bit profligate', could now be sued for divorce.<sup>61</sup> The conclusion was that a wife could only petition for a full divorce on the grounds of qualified (or rather inflated) adultery: incestuous or bigamous adultery—or rape, sodomy

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<sup>59</sup> Wroath, *Until They Are Seven*, p. 128.

<sup>60</sup> Sir William Follett, the attorney for George Norton, Caroline Norton's husband, in the trial of Lord Melbourne for 'criminal conversation' with Caroline Norton cit. John Wroath, *Until they are Seven*, p. 88.

<sup>61</sup> Lord Cranworth discussing the Matrimonial Causes Bill, cit. John Wroath, *Until They Are Seven*, p. 131.

or bestiality. Simple (non-incestuous or non-bigamous) adultery by a husband only qualified if coupled with ‘cruelty’ or the parties having lived apart for two years following ‘desertion without cause’.

The new Act hardly opened the gates to widespread divorce. In 1858 there were just twenty-four divorces. Figures never went higher than the low hundreds per annum until the end of the First World War, when they first tipped over the one thousand mark, and increased in steady increments with a spike for the Second World War. By 1961, there were still only 27,000 divorces per annum in the United Kingdom. Significant social change came with the Divorce Reform Act of 1969, which allowed couples to separate on the grounds of ‘irreconcilable differences’, rather than having to prove ‘adultery’, or ‘cruelty’. (In the U.K. the possibility of divorcing on the grounds of ‘irreconcilable differences’ has now been withdrawn). Divorce figures now changed dramatically under the impact of the new legislation and the relaxing of the social mores, rising from 56,000 per year in 1969 to 125,000 by 1972 and 165,000 in 1993. The ‘tender years’ doctrine now had serious demographic consequences—and as profound an impact on the family as dramatic as the effects of the darker side of the so-called global economy. Children are separated from parents as migrant workers seek economic stability in the centres of global capital in North America and Europe. Ten million Filipino children grow up without one or both of their parents (often their mother who works overseas to fund them) and on average see their parents once every two years. At the same time, in so-called advanced economies, vast numbers of children now have one ‘at-home’ parent and one ‘contact parent’, more like a visiting uncle or aunt. I say ‘uncle or aunt’ in the spirit of equality and even-handedness. But in fact I feel that this is rather like imposing gender-neutral language on the Bible. M dominates. The Bible is overwhelmingly Male. And after one hundred years of the ‘tender years doctrine’, coinciding with the rise of divorce, there are far more parental uncles than

parental aunts. In family law and citizenship law (and also some feminist theory) we are witnessing strange revivals of old Christian-biblical images: new apparitions, even, or the virgin mother, the mother-and-child—with the father as a shadowy Manoaah or Joseph figure, offstage. There are new myths of female autogeneration, as well as special relationships between the mother and divinities/the state.

The Virgin Mary is such a queer figure, the one who ‘alone of all her sex... goes against both of the two sexes’, mesmerising Christian cultures with the excessive potential of this intensely womanly-unwomaned goddess.<sup>62</sup> For those who know the biblical traditions, she can be seen as the (only) visible icon of the complexity of biblical origins, where reproductive power shifts between mother and/or father and that always awkward third (or first) god. Throughout the centuries, she changes. She becomes softer; more holy; more emphatically without sin/ sex; and more and more intensely the figure of gendered and embodied pathos, love, softness, suffering, mourning. *Stabat Mater*. *Mater Dolorosa*. *Eia Mater, fons amoris*. ‘Hail mother, source of love!’.<sup>63</sup> Did the sexual passion recede and the vagina close to make room for all the other emotion and humanity that Mary now had to embody? No sexual fluids but endlessly flowing love and milk and tears? In 1854, the doctrine of the immaculate conception proclaimed the mother of god to be without sin. The same years witnessed the rise of the legal symbol of the increasingly holy (separate) mother as the repository of softness, safeness and tenderness. The new theological-legal-nexus, combined with the new softened concept of ‘nature’, repressed the darker stories in folktales, fairy-tales, the Bible and classical literature: Mommie Dearest; Mother Courage; the wicked (step?) mother; the cannibal mother; the competitive rival mothers; the mother who hurts or kills her children; the mother-warrior; the mother who penetrates a man with a tent-peg;

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<sup>62</sup> Kristeva, ‘Stabat Mater’, p. 180.

<sup>63</sup> Giovanni Battista Pergolesi, *Stabat Mater*, 1736.

mothers like Anat or Tiamat or Medea or the mothers in an Angela Carter novel, who embody full-blooded ‘nature red in tooth and claw’. Psychoanalytic criticism is highly illuminating on the discomfort and antinomies around the Mother, which are far stranger, arguably, than those around the Father (especially in feminist criticism). Julia Kristeva offers a profound reflection on how the ‘consecrated (religious or secular) representation of femininity is absorbed by the ...idealized archaic mother’, which is an ‘idealization of the relationship that binds us to her...—an idealization of primary narcissism’,<sup>64</sup> and diagnoses why strangely uncreative reflections on the mother, even (especially) in the feminist movement, fall into allergies to, or repetitions of, highly traditional forms. But psychoanalytic origin stories only partially account for the new and recent sightings of an idealised (virgin) mother. She is born of very particular social and legal reconfigurations, in the nineteenth century, and then again, after the Second World War.

Specifically, the new investment in the mother-and-child relies on a particular construction of the family that emerged at almost the same point that it ‘broke down’. As social historians regularly point out, the historical universality of the nuclear family is largely mythological. It came closest to actualisation between the late 1940’s and the early 1970’s. The specialisation and separation of the verb and task ‘to mother’ was consolidated by particular economic and legal conditions and was strengthened by the rise of self-conscious parenting, especially mothering, after the Second World War. After World War II, advanced industrial economies made it possible for the first time to imagine, and fund, the so-called ‘stay-at-home’ mother.

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<sup>64</sup> Kristeva, ‘Stabat Mater’, p. 161. ‘Now, when feminism demands a new representation of femininity, it seems to identify motherhood with the idealized misconception and, because it rejects the image and its misuse, feminism circumvents the real experience that the fantasy overshadows. The result?—A negation or rejection of motherhood by some avant-garde feminist groups. Or else an acceptance—conscious or not—of its traditional representations by the great mass of people, women and men.’



Before World War II, it was unusual for mothers to give a lot of time to childcare: the better off delegated it to servants and the children of poorer women were looked after by communities of family members and neighbours when they went out to work. From the 1940's to the 1960's there was increased pressure on women to care 'full-time' for their children—and not just until school age. The growing assumption was that married women should give up any employment outside the home and be supported by their husbands. The post-war gender apartheid of the self-conscious hands-on middle class mother, economically supported by a hands-off father, was consolidated just two decades before the perceived collapse of the family, complete with hysterical outbursts about the growing numbers of single mothers and the sudden increase in divorce. The birth of affective, specialist mothers and what we could call the 'maternal mystique' coincided with the campaign—so well documented by Betty Friedan in her classic *The Feminine Mystique*—to encourage women to go back home and abandon the queer performance of 'male' jobs that they had taken up, of necessity, during the Second World War. Feminist work from the 1940's, fifties and early sixties tended to be maternal-sceptic because it saw the rise of the specialist work of M-for-Mother as the logical corollary of, and compensation for, the anxious public consolidation of M-for-Male. Simone de Beauvoir's manifesto *The Second Sex*, written in 1949, linked the secondary status of women to middle class women's often comfortable entrapment in the roles of 'wife' and 'mother', which allowed them to resist the call to their own existence. With a feminist antagonism towards women that is rarely seen today, Beauvoir castigated middle class married women for benefitting from, and being complicit with their caged domestication, echoing and updating Mary Wollstonecraft's rant against the 'feathered race'.

Alongside the dramatic story of my partner's separation comes the more pedestrian story of my more-than-'amicable' separation from my son's father and partner of twenty years. On principle, we split all assets and our beloved son down the middle, metaphorically speaking.

But I am struck by how many people see this either as a symptom of my (foolish) over-  
generosity, or, alternatively, a symptom of my inability or unwillingness to have my son with  
me full time, being such a devoted ‘career mother’. The assumption in both cases is that my  
son is my son to give. When I download the forms to complete the legal red tape of our DIY  
divorce, I find that the option of ‘irreconcilable differences’ introduced back in 1969 has been  
withdrawn, and that there is no possibility of a ‘no fault’ divorce. This is far from accidental.  
As Tony Blair put it in 1997, when divorce statistics were at their peak, ‘We cannot say we  
want a strong and secure society when we ignore its very foundation: family life’.<sup>65</sup> Revisions  
to divorce and child custody laws and taxation and inheritance laws have been carefully  
controlled to favour marriage and the family. Nineteenth century commentators worried  
about the potentially errant woman, who would leave a marriage as soon as she had the  
guarantee that she would not lose her children. Now the question of child custody and the  
gamble of child custody favours marriage—with the primary danger falling on the *potentially*  
*errant F*, tacitly encouraged to stay in the marriage because of the ‘implied penalty of losing  
a child’.<sup>66</sup>

Lacking the options of ‘irreconcilable differences’ and ‘no fault’ divorce, my husband and I  
must subject ourselves to a bizarre paper charade, in which a ‘petitioner’ must serve notice to  
a ‘respondent’ and accuse them of fault, fall and sin. There are three admissible tick-boxes of  
sin: adultery; unreasonable behaviour; or desertion for a continuous period of at least two  
years. As a good textual critic, I can see the archaeological strata of the slight and careful  
recensions to canonical legal texts; canons that seem more permanent and persistent than the  
Bible. The ‘two years’ comes from the Matrimonial Causes Act of 1857. Ingenious  
interpretations may add jots and tittles, but once they have been entered in the recording

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<sup>65</sup> Tony Blair, first major speech to conference after winning the General Election, *The Guardian* 1.10.97

<sup>66</sup> Cf. Sir Edward Sugden n. x above.

system, words are hard to delete. The real shock is the persistence of that old word *Ehebruch*; ‘adultery’. Women now have equal rights to adultery! Hallelujah! Adultery is no longer the violation of a man’s female property. It can also be a violation of a woman’s male property. But it is exclusively heterosexual. The equality principle battles awkwardly with the old anachronism, and its connotations of sexual property, and exclusively heterosexual sin.

Since I and my former husband both have new partners and are not yet technically divorced, we opt for the old anachronism and what we jokingly call ‘adulteration’. I think that it is ironic for someone associated with ‘reception history’ or biblical afterlives to be writing up her life in terms on loan from the Ten Commandments. But then I am horrified by what the form now asks of me with incredible bureaucratic sangfroid in section 6. I am required to support my case by providing a date when my husband committed adultery, and to also state how I knew this. Really? I think of all those poor couples who, before 1969, could only leave unhappy or dysfunctional marriages by feigning a scene of ‘adultery’ and getting a private investigator to take photographs of one party leaving the house of another man, or another woman. I think I’m not so far from them as I would like, as I have to place myself in the ignominious position of a 1950’s divorce investigator, or a strange voyeur. We get around this by my husband testifying and giving a made-up date in the ‘statement of case’ box, and then stapling a signed statement to the form in which he attests that this is indeed his statement and it is his signature (as witnessed by me!). I am incredulous at this ignominious farce of the trial of the truth of the end of my marriage; this hilarious mirage of ‘proof’ or ‘ground’ that can hardly be confirmed by the local police.

My partner’s daughters (aged five and nine) were taken away the very next day after the court hearing, which the judge had insisted the children must neither be informed about, nor prepared for. When my partner emerged from the hearing, I saw for the first time that ‘falling

to one's knees' is not just a metaphor for pain. When he told me the outcome, a sound came out of my mouth that I have never heard before. F was criminalised by the process. He was not permitted to see his daughters on the evening before their departure on penalty of imprisonment. He was permitted just two hours 'contact' before they were taken away. The CAFCASS<sup>67</sup> officer-- the social worker appointed by the court to listen to the desires of the children—had bizarrely and grotesquely recommended that M hold a goodbye party in which F must demonstrate his support for their new life adventure, which would now take place entirely without him. In ways that would have been comic under any other circumstances, the local Canterbury court seemed to confuse the mid-West and the Wild West. Family court hearings in the UK are often referred to 'trials by CAFCASS' and everything depends on the recommendations based on these social worker interviews with M and F and the children who are of sufficient age (in our case, his eldest daughter, then aged nine). The CAFCASS officer informed only M of the time and date of the interview and M drove the children there. This is standard procedure. F was not informed until his daughter told him, after the fact. She was proud of how she had stood her ground, even as (she felt) the CAFCASS officer had tried to persuade her of the benefits of living with M, in the USA. When the CAFCASS officer entered the court, she sat on the M's side of the court, as if part of M's legal team. She acknowledged that (despite the very lopsided interview arrangements) the eldest daughter had resolutely expressed her equal love for her parents and her desire to live with both of them half the time. However, she dismissed her views on the grounds that she was too young to know what was good for her. In her expert opinion, the elder daughter would get over her separation from her father, and would surely learn to love her new single-parent/grandparent life in the USA in time.

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<sup>67</sup> CAFCASS stands for the 'Children and Family Court Advisory Support Service'.

The farewell party proposed by the CAFCASS officer didn't take place, in the end. There wasn't time. F was not permitted by M or by the state to see his daughters on the evening before they left, after he emerged exhausted from the court. He was allowed to see his children for just two hours on the day of their departure (closely supervised by M, who followed them in every step of their rendezvous a few metres behind). During the horrendous task of clearing out the family home, F found hastily written notes and love hearts to him from his children: 'Dear Daddy and Adam and Aiyone I will miss you so so much I love you so so so so so so so 1000,000 much. I will send cards to you and text and call every day. And I will skype you. Good Bye'. I had the unenviable task of telling my son that the children he loved were leaving that morning, then rushing him to the beach for the short goodbye. I also had to deal with his deeply traumatised behaviour: he became immensely nervous; he would sometimes stare into the mid-distance and start to tremble; he would not allow me out of his sight; he could not even go to the bathroom on his own; and he had to lock all doors compulsively, scared of what outside forces might do to his family. Having made such a momentous decision, the state offered no little guidance booklets for how to deal with the post-traumatic distress, though they did recommend that my partner's daughters get some 'counselling' in the U.S. Since August 2015, my partner's everyday involvement with his children has been reduced to tightly controlled moments of Face-Time, with no cards for birthdays or father's days, and no contact beyond the two talks per week minimum prescribed by court order. The children never speak to their paternal grandparents (as this is not specified by court order). Former easy everydays have been reduced to two weeks at Christmas (in the USA); one week at spring break (in the USA); and an annual trip home to the UK in the summer (less than ten weeks total, from fifty two weeks of the year). Holding a family together across the Atlantic involves bi-annual commutes and a very large proportion of his annual income, which now goes on seeing his children rather than saving for their

futures. Solicitors regularly refer to this as ‘generous contact’: a term that seems to reinforce an owning and loaning system, and seems (like the parsimonious word ‘tolerance’) to manifest inequity, while also reinforcing the cultural myth of grace. Once upon a time womanly-maternal grace was used against the force of paternal law. Now, in our case, the ‘paternal’ (?) law reinforces the idea of maternal grace.

The new nativity myth of the ‘mother and child’ that has become so prevalent since World War II is not simply a ‘return of religion’; a resurgence of the religious past in its old forms. It is a new mythology born of economic, social and legal infrastructures that would have absolutely inconceivable for the first century Mary, or all those cultures that have lauded her. It relies on very specific and time-bound understandings ‘family’, ‘child’ and ‘home’. Concepts need a material infrastructure for them to become thinkable, possible. Only advanced industrial economies can support the very idea of a full-time or primary parent who does not work outside the ‘home’, and ‘children’ who are the object of care. There could be no specialist mothers without the child and the invention of the concept of childhood. There could be no child when children were mini-adults, working in farms, factories and mines. In the U.K., ‘children’ came into being in a more specialist and devoted way with legal changes such as the 1880 Education Act, which made school attendance compulsory between the ages of five and ten--though many children still played truant in order to work. The *home*, too, took on particular resonances and a central function in the economy after the Second World War. The increasingly self-conscious world of finance—‘*the economy*’--attached itself with particular intensity to the home, as if adapting the old world *oikonomia* (‘household management’) in a very specific way. This was particularly the case in the USA and the UK, where the enforcement of the nuclear (heterosexual and reproductive) family, coincided very explicitly with policies to market the private family home (owned through mortgages) as the ultimate symbol of security and success. In Britain, National Exhibitions like *Britain Can*

*Make It*, organised by the Council of Industrial Design in 1946, and the Festival of Britain in 1951 promoted home ownership. The home became the centre of the liberal and then neoliberal economy, and *played a double role, as 'house' and 'home'*. Increasing self-awareness about the central role of the house in the familial and national/global economy co-existed with (and perhaps created) an increasingly saccharine and idealised ideology of the 'home', as the domain of care. Already in the late nineteenth century we find biblical women now living in homes (and gardens), a long way from the brutal reality of life in Iron Age Canaan or Persian Yehud, or the Roman Empire:

Naomi and Ruth enjoyed their evenings together. Naomi did not spend the day in idleness either. She had her spinning-wheel and loom to make their garments; she worked also in her garden, raising vegetables, herbs and chickens; and they talked over their day's labor as they enjoyed their simple supper of herb tea, bread and watercresses. Their menu was oft times more tempting, thanks to Ruth's generous purchases on her way home.<sup>68</sup>

Pass the watercress. Would you like another cup of (herbal) tea?

Arguably the ideology of 'home' became more saccharine, the more explicitly the house and family became the centre of the liberal and then neo-liberal economy. The brute economic function of the house—and family—was made very explicit in Gary Becker's *A Treatise on the Family*, endorsed by Milton Freidman and the Chicago School of Economics and published in the 1980's. Screeds of complex equations make it possible to calculate the value of a marriage, according to its 'marriage-specific capital, of which 'children are the prime

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<sup>68</sup> I accessed the online version of Cady Stanton, *The Woman's Bible* (1895 and 1989) Project Gutenberg:

<https://archive.org/stream/thewomansbible09880gut/wbib110.txt>

example' and to analyse 'different variables in the propensity to divorce'.<sup>69</sup> But the family also becomes a complex intermediate zone: the zone of competitive economy, but also the extension of self and self-interest. For Becker, the home is the place where Adam Smith's famous truism that 'It is not from the benevolence of the butcher, the brewer or the baker, that we expect our dinner, but from their regard to their own interest' clashes with his counter(?)-assertion that 'Every man feels his own pleasures and his own pains more sensibly than that of other people...After himself, the members of his own family'.<sup>70</sup> The family/home is the site of an intensely competitive economy (and calculations of mutual benefits and risks), but also the only zone of value, as the extension of the self. Against these hard-nosed calculations of the house and the family, we find a more and more entrenched reinforcement of the symbolism of the home—even in the most unlikely places. In her attack on neoliberalism, in which she also references Becker, Wendy Brown highlights the precarity and brutality of the modern workplace, and also shows how neoliberal values have colonised *private* 'dating, mating, creative and leisure practices',<sup>71</sup> as thoroughly as they have colonised *public* work space. But the home seems to be strangely ringfenced, and when she talks about the 'family' she seems to fall back into comforting antinomies between economy and home. The home is the site of safety and salvation. Holy and sacred (set apart) it is the site of counter-economic sacrifice: 'the sacrificial domain of family relations' dominated by the

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<sup>69</sup> Becker, *A Treatise on the Family*. The equations all began from the starting point that 'Divorced women almost always receive custody of the children' (p. 224) Becker's book has chapter titles such as 'Assortative Mating in Marriage Markets' or 'Polygamy and Monogamy in Marriage Markets', and complex graphs on, for example 'Interaction between quantify and quality of offspring' and the 'fitness of offspring' (the calculation of the reproductive value of each human child unit as it relates to a limited supply of energy and time).

<sup>70</sup> Becker, *A Treatise on the Family*, p. 172.

<sup>71</sup> Brown, *Undoing the Demos*, p. 177; my italics.



mother who ‘suffers economic privations for her “natural” commitment to caregiving’.<sup>72</sup> The home is the place of refuge; the sanctuary for all developing, mature, and worn-out human capital: ‘children, adults, disabled, and elderly’.<sup>73</sup> Given that the economic colonisation of the private began, very concerted, at *home*, is it not dangerously naive to assume that the home, of all places, has escaped?

British solicitors (correctly) advised both my partners and his then-wife that if F left the house, then this would automatically give M custody on the grounds that she was the primary carer who was resident in the family home. During the terrible run-up to the family court hearing, my partner found three typed up pages of calculations (not unlike a page from Gary Becker, though not as complicated), prepared by his ex-wife’s lawyer brother, on which M had put the biro note ‘Will I get more in the States?’ M’s fundamentalist parents turned up unannounced in the family home, in the attempt to make it unbearable for him to stay. F hung on in the family home despite the deep emotional traumas. Though in the end it made no difference to the outcome of the family court hearing, he and his daughters spent the summer camping in the living room with the wife and in-laws performing daddy’s estrangement from ‘the family’, and the in-laws sleeping in the former couple’s bed upstairs.

Far from being the romanticised site of extra-economic ‘social glue’, the home and family is commonly understood as the primary asset. The mortgage is the main outgoing. And income is related very explicitly to custody of the children post-divorce. In the 1830’s, data on the family was first recorded General Register Office, later merged with the Government Statistical Service, making it possible to analyse and shape family demographics. Today any potentially divorcing M or F can go to the British Government’s helpful online calculator

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<sup>72</sup> Brown, *Undoing the Demos*, p. 102.

<sup>73</sup> Brown, *Undoing the Demos*, p. 105.

‘Calculate Your Child Maintenance’ (<https://www.gov.uk/calculate-your-child-maintenance>).

The ‘paying parent’, is defined as the ‘parent who doesn’t have main day-to-day care of the child’. The ‘receiving parent’ (or custodial parent) is defined as ‘the parent with main day-to-day care of the child.’ The operative asymmetrical terms are ‘paying parent’ and ‘receiving parent’; or ‘custodial parent’ and ‘non-custodial parent’, or ‘*residential* parent’ and ‘contact parent’. More money changes hands if the custody of the children is not equally shared.

Under such circumstances, the assumptions that no-one ever wants to be left holding the baby, or that ‘men have been more willing than women to divorce partly because they are not given custody of the children...’<sup>74</sup> –seem dangerously naive and out of date. There are clearly good emotional and economic reasons, for both parties, for wanting more of the baby--not least because, in the UK, the primary care of the children is associated with staying in the family home, or in legal terms ‘having greater financial needs’, the primary financial need being ‘housing needs’. Income is explicitly related to majority ownership of the children, or *custody*, a strangely sinister word which means both ‘capture’ and ‘imprisonment’ and ‘protective care’. The language of the family courts (‘custody’ and ‘visitation rights’) is disturbingly close to the language of the prison system. The state of Texas has recently introduced a different term: ‘conservatorship’. The move to the term ‘conservatorship’ is coupled with a move towards ‘joint conservatorship’, and an emphasis on shared responsibilities rather than ‘possessive care’. In the uneven lottery of child ‘custody’, Texas seems more progressive than the UK. As with many battles between other recently realised adjustments in equality and rights (for example the battle between freedom of religion and sexual freedom), there are huge discrepancies in outcomes between states. Had my partner and his ex-wife lived in Texas, or California, or Norway, the outcome would (we are told) have had more of a chance of being very different. Ironically, had both parties been resident

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<sup>74</sup> Becker, *A Treatise on the Family*, p. 229.

in Iowa at the moment of divorce M would probably not have been granted permission to immediately leave the state. Ours is a particularly acute case—and a revealing one. The international question amplified the deep cultural mythologies of M and F.

Back in the 1980's Lynn Segal worried that what she termed 'maternal revivalism' in the feminist movement was leading to an 'exaggeration of sexual difference' and a Manichean or Gnostic concept of M and F.<sup>75</sup> The feminist movement has added the weight of its own incredulity to the impossibility of queering the mother and has strangely reinforced the exclusive relationship between M and nurture that was once so generously/graciously conceded by paternal law. 'A man can *possibly* mother a child', says Nancy Chodorow. But 'it's hard for dads'. Occasionally by a miracle, you might get a male M. But it is about as common as a virgin birth. I think about the shocking recent statistics from the new governmental initiative to challenge 'Edwardian' attitudes to child-rearing by allowing working mothers and fathers to share up to fifty weeks of parental leave before the child's first birthday. In its first year this was taken up by only one per cent of fathers, a statistic that sharply distinguishes countries like Norway and Sweden from the UK. The reasons are surely complex, and include the pay differentials between M-for-Male and F-for-Female and the excessive bureaucracy of the process. But we should note that that fifty-five percent of women interviewed in one survey said that they would not be open to sharing their maternity leave: statistics that cannot simply be read as an effect of unequal pay.<sup>76</sup>

As I fill out my strangely anachronistic divorce petition form, I think about *forms*: bureaucratic legal forms; forms as correct procedures; rituals of social etiquette; but also

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<sup>75</sup> Segal, *Is the Future Female?* p. 145; cf. bell hooks, *Feminist Theory from Margin to Center*, p. 135

<sup>76</sup> <http://www.independent.co.uk/life-style/health-and-families/health-news/shared-parental-leave-survey-only-1-of-fathers-take-opportunity-to-split-time-off-a6969071.html>

forms as visible shapes or configurations; outlines; essences, fundamental truths. I think of the lack of forms for the very recent phenomenon of ‘broken’ relationships. Our storytelling has not yet caught up with this still new phenomenon. We desperately need creative liturgies and stories to pour our experiences into and to make more life-giving stories and consequences for our children. We can do much much better than the reflex story of tragedy, catastrophe and vengeance and the duel between self-protecting enemies staged in this secular-theological-bureaucratic form for divorce. Religious communities and the state (its social workers and its legal systems) need to take responsibility for more creative stories and values. At the moment, life-affirming stories and better outcomes for children only come when families feel they have the power to tell their own story, and deliberately opt out of the stories told by Gods and Laws. For many, it is hard to tell one’s own story or to resist the temptations of the dominant story of tragedy and the pageant of one-sided guilt. The structures are tempting. The one who first makes it to the role of ‘petitioner’ can enjoy the comfort of a liturgical-legal story of an enemy who has sinned against him/her, with the full support of law and the state. All the other sins of a marriage/relationship can be elided in ‘adultery’. This is the temptation of sex, and the master-narrative of sex. In some cases families do map onto these lop-sided stories of abuse and violation. But we are encouraging all families to narrate their stories as dramas of sin and abuse (more or less metaphorical), and terrible consequences follow when people *believe* or actualise this liturgy of law, this social-legal script. Feminist and ideological critics, and before them, the deists, first argued that disbelief and demystification can be a form of moral virtue, for the benefit of society. Disbelief and demystification have been focused on scriptures—especially the Bible, as if the Bible somehow embodied all potentially pernicious scripts. But what of the canon of the law: the canon that, far more than the Bible, really gets around and co-ordinates the public standard of truth, proof and belief? Like the Bible, the law is a series of historical sediments

that stand in for ‘truth’; old words that struggle to accommodate new realities (like ‘adultery’, which can be made to accommodate gender reversal but not homosexuality, queerly). The social edifices supporting and endorsing judges go far deeper than the edifices supporting priests.

As a fitting conclusion to this form—and also this essay, with its unnerving revelations of new mixtures of the ‘secular’, theological and the biblical, and its new sightings of the virgin mother—it turns out that the form ends with a bureaucratic supplication or *Prayer*. Section 10 is a perfect British-bureaucratic ‘prayer’ with ‘supporting notes for guidance’ on how to pray:

## **Part 10**

**See the supporting notes for guidance on how to complete this section**

### **Prayer**

The Petitioner therefore prays

#### **(1) The application**

That the  marriage  civil partnership be dissolved

**or**

That the Petitioner be (judicially) separated from the Respondent.

I supplicate; I petition, thinking of the women who once ‘prayed’ or petitioned for grace from the legal father, and my partner who is now perceived as the dependent beneficiary of maternal grace. I think of the female petitioners petitioning the Lord Chancellor or the Master of the Rolls; and I think of the epithet for Judges and Archbishops: ‘my Lord’, ‘Your Grace’. I close my eyes and pray for more creative stories and forms. And then I accuse my soon to be ex-husband and the father of my son of a sin, and I pray my prayer to the state.

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