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SHAPING EXPECTATIONS ABOUT DADS AS CAREGIVERS: TOWARD AN ECOLOGICAL APPROACH

*Holning Lau**

I. INTRODUCTION

A growing number of men are embracing childcare responsibilities traditionally associated with women, such as swaddling and singing to a fussy infant to coax her into slumber; preparing a child's meals; cleaning messes made by a child; doing a child's laundry; and managing an older child's after-school schedule, which might include craft or baking projects, running errands together, accompanying the child to sports practices or dance classes, or helping with homework. The number of "stay-at-home dads" in the United States has grown rapidly to approximately two million.¹ A 2012 study found that fathers comprised

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1. See *Statistics on Stay-At-Home Dads*, NAT'L AT-HOME DAD NETWORK, <http://athomedad.org/media-resources/statistics> (last visited Nov. 26, 2016). This Article adopts the definition of stay-at-home dad used by the National At-Home Dad Network: "A father who is the daily, primary caregiver of his children under age 18." *Id.* This definition includes a father who works part-time or unconventional full-time hours while still serving as the primary caregiver for his child(ren). See *id.* For brevity, this Article generally refers to stay-at-home dads as at-home dads.

Estimates of the number of at-home dads vary based on the particular study's definition of an at-home dad. See *id.* In 2012, the Pew Research Center estimated that there were two million at-home dads. GRETCHEN LIVINGSTON ET AL., PEW RESEARCH CTR., GROWING NUMBER OF DADS HOME WITH THE KIDS: BIGGEST INCREASE AMONG THOSE CARING FOR FAMILY 5 (Jens Manuel Krogstad ed., 2014), http://www.pewsocialtrends.org/files/2014/06/2014-06-05_Stay-

approximately sixteen percent of all stay-at-home parents.² Meanwhile, fathers employed full-time outside the home tend to devote more time to childcare after work compared with fathers from previous generations.³ Despite these changes, however, mothers still shoulder a much larger share of childcare responsibilities, and our cultural environment reinforces this pattern.⁴

We are surrounded by a culture that continues to treat childcare as the domain of women.⁵ Consider when a man prepares to become a father. He will likely learn that his employer offers no paternity leave, even though it grants leave to new mothers. If the father decides to stay home anyway, he will probably search for activities to enjoy with his child and encounter numerous classes called “Mommy and Me,” as

at-Home-Dads.pdf. Some commentators believe that the Pew Research Center’s estimate is too high because it defines an at-home dad based on employment status. *Id.* at 5, 8. For example, the Pew Research Center would count an unemployed father as an at-home dad even if he does not perform caregiving responsibilities while staying at home. *Id.* Adopting a definition of at-home fatherhood that focuses on performances of caregiving as opposed to employment status, Professor Beth Latshaw analyzed data from the American Community Survey and estimated that there were 1.4 million at-home dads in 2009. Beth A. Latshaw, *Is Fatherhood a Full-Time Job? Mixed Methods Insights into Measuring Stay-At-Home Fatherhood*, 9 *FATHERING* 125, 142-45 (2011). Extrapolating from Latshaw’s findings, the National At-Home Dad Network estimates that there are currently at least 1.75 million at-home dads in the United States. *Statistics on Stay-At-Home Dads, supra*.

2. See LIVINGSTON ET AL., *supra* note 1, at 9 (analyzing data from the Pew Research Center). According to Pew Research Center data on fathers who live with their children, thirteen percent of black fathers, eight percent of Hispanic fathers, eight percent of Asian-American fathers, six percent of white fathers, and seven percent of fathers overall were at-home dads in 2012. *Id.* at 9-10.

3. KIM PARKER & WENDY WANG, PEW RESEARCH CTR., *MODERN PARENTHOOD: ROLES OF MOMS AND DADS CONVERGE AS THEY BALANCE WORK AND FAMILY* 27-28 (Marcia Kramer ed., 2013), http://www.pewsocialtrends.org/files/2013/03/FINAL_modern_parenthood_03-2013.pdf. According to data from the American Time Use Survey, “[f]athers have nearly tripled their time with their children (from 2.5 hours [per week] in 1965 to 7.3 hours per week in 2011).” *Id.* at 27. Because the number of at-home fathers remains very low, changed behaviors of fathers who work outside the home full-time likely contributed to this growth in the overall hours that fathers spent with their children. *Id.* at 28.

4. See *id.* (“In 2011, the average child care time is 7.3 hours per week for fathers and 13.5 hours per week for mothers.”); see also LIVINGSTON ET AL., *supra* note 1, at 9 (noting that mothers still comprised eighty-four percent of at-home parents in 2012); Jill E. Yavorsky et al., *The Production of Inequality: The Gender Division of Labor Across the Transition to Parenthood*, 77 *J. MARRIAGE & FAM.* 662, 662-63 (2015) (studying dual-earner heterosexual couples and finding that “[m]others, according to the time diaries, shouldered the majority of child care and did not decrease their paid work hours”).

5. Traditionally, mainstream American culture dictated that the father’s role in parenting was not caregiving, but breadwinning. To the extent that fathers were expected to care for children, it would be limited to very specific forms of caregiving, such as disciplining children and engaging children in sports or other active play. For a discussion on these limited forms of so-called masculine care, see Nancy E. Dowd, *Fatherhood and Equality: Reconfiguring Masculinities*, 45 *SUFFOLK U. L. REV.* 1047, 1063-64 (2012).

though fathers do not belong. While running errands with his little one, he may need to take a diaper changing break, only to find that changing tables are located exclusively in women's restrooms. As the father shops for baby supplies, he will surely discover countless advertisements deploying "mothers know best" rhetoric that questions the competency of fathers. All of these moments produce cultural messages that men are not suited for—or are not expected to perform—caregiving.

These cultural dynamics are bad for men, bad for women, and bad for children. Fathers who are primary caregivers too often report feelings of isolation and stigma, feelings of being hyper-scrutinized for their parenting skills, and practical difficulties such as the lack of access to changing tables.⁶ Cultural expectations about caregiving are also bad for women because they place disproportionately heavy pressure on mothers. This is especially harmful to women who wish their male partners would contribute more to childcare so that they could focus more energy on their careers. The current cultural environment is also bad for children. To be sure, in some families, it might make sense for the mother to do most of the caregiving. But for many, if not most, other families—especially families with single or gay dads—it is in the children's best interest for fathers to be engaged caregivers.⁷ However, we live in an environment that discourages such engagement.

In this Article, I seek to illuminate the pervasiveness of cultural forces that discourage paternal caregiving, and I propose ways the state can foster an environment that better supports men who take on childcare responsibilities.⁸ The Article proceeds as follows. In Part II, I draw on my own experiences and the experiences of other fathers to spotlight ways that our cultural environment discourages paternal caregiving.⁹ Part III elaborates on why support for paternal caregiving

6. For an elaboration on these reports, see *infra* Part III.

7. According to a 2013 report, "[t]he number of single father households has increased about ninefold since 1960, from less than 300,000 to more than 2.6 million in 2011." GRETCHEN LIVINGSTON, PEW RESEARCH CTR., *THE RISE OF SINGLE FATHERS: A NINEFOLD INCREASE SINCE 1960*, at 1 (2013), <http://www.pewsocialtrends.org/files/2013/07/single-fathers-07-2013.pdf>. Meanwhile, U.S. Census Bureau data from 2010 suggest that nineteen percent of male same-sex couple households were raising children under the age of eighteen. GARY J. GATES, WILLIAMS INST., *LGBT PARENTING IN THE UNITED STATES 2* (2013), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Parenting.pdf>.

8. See *infra* Parts II, V.

9. See *infra* Part II. In weaving personal narratives into this Article, I draw inspiration from schools of thought such as feminist legal theory and critical race theory, which have long viewed personal narratives as a valuable component of legal scholarship. For background information on narrative methodology in legal scholarship, see Kathryn Abrams, *Hearing the Call of Stories*, 79 CALIF. L. REV. 971, 282-87 (1991); Mario L. Barnes, *Black Women's Stories and the Criminal Law: Restating the Power of Narrative*, 39 U.C. DAVIS L. REV. 941, 946-48 (2003) and Robert S. Chang, *Toward an Asian American Legal Scholarship: Critical Race Theory, Post-Structuralism*,

benefits men, women, and children.¹⁰ Part IV introduces readers to existing proposals for making workplaces friendlier toward fathers who wish to assume childcare responsibilities at home.¹¹ While I fully support reforming workplaces, I explain that insufficient attention has been given to the limitations of workplace reform proposals.¹² Part V examines how the state could, and should, help reshape expectations about paternal caregiving by addressing cultural dynamics beyond the workplace.¹³ Further, Part V encourages an “ecological approach” to reforming laws and public policies that impact paternal caregiving.¹⁴

In sketching out this ecological approach, I aim to widen our scope of analysis. Legal scholars who write on paternal caregiving have focused their energies on reforming workplace policies such as paternity leave.¹⁵ In this Article, I seek to expand our scrutiny. We must address the broader cultural environment in which workplaces are situated. Accordingly, this Article proposes an ecological approach that accounts for a diverse range of elements in our surrounding culture.¹⁶

At first blush, cultural norms may appear to exist beyond the reach of law. However, with closer examination, we can see that the state has the ability to shape our cultural environment.¹⁷ To illustrate this point, I discuss examples such as the state’s ability to influence men’s access to diaper changing tables, its potential role in reframing “Mommy and Me” classes to make them more inclusive, and its ability to counteract regressive messages in the marketing of baby products.¹⁸ Each of these examples alone may seem like a very small target for reform. Yet, addressing small targets collectively could profoundly reshape our surrounding cultural landscape.¹⁹

and Narrative Space, 81 CALIF. L. REV. 1241, 1268-86 (1993).

10. See *infra* Part III.

11. See *infra* Part IV.A.

12. See *infra* Part IV.B.

13. See *infra* Part V.

14. See *infra* Part V.

15. See, e.g., Keith Cunningham-Parmeter, *(Un)Equal Protection: Why Gender Equality Depends on Discrimination*, 109 NW. U. L. REV. 1, 48-55 (2014); Darren Rosenblum, *Unsex Mothering: Toward a New Culture of Parenting*, 35 HARV. J.L. & GENDER 57, 103-14 (2012); Michael Selmi, *Family Leave and the Gender Wage Gap*, 78 N.C. L. REV. 707, 770-73 (2000).

16. See *infra* Part V.

17. See *infra* Part V.

18. See *infra* Part V.

19. See *infra* Part V.

II. OBSERVATIONS ON OUR CULTURAL ENVIRONMENT

My life changed forever when my husband and I adopted a newborn baby girl in the spring of 2014. She has been lighting up my world ever since. After my daughter was born, I had the privilege of taking the following academic year off from teaching. I know that having children and taking time off from work is not the right choice for everyone. For me, however, I cannot think of anything more right, and I would not trade the experience for anything. I began writing this Article toward the end of my year away from teaching, as I reflected on my first year-and-a-half of being a father.

While being an at-home father brought me profound joy and personal growth, it also heightened my awareness of cultural norms that I find troubling. I have long been aware of the outdated cultural assumption that caregiving for young children is a woman's role. Still, as a new father, I frequently found myself in situations that heightened my perception of this gendered dynamic. Our social environment is filled with messages that fathers are not suited for caregiving.

Men receive these messages when they prepare to become parents and realize that their employers do not offer any form of parental leave for fathers. I was very fortunate to be able to take paid parental leave during the fall because my university guarantees a semester-long paid parental leave to all faculty. In addition, I secured a research sabbatical for the spring term. I had work responsibilities during the spring, but I could complete them from home and create my own schedule, allowing me to spend a lot of hours with my daughter when she was not at her part-time daycare. My year away from teaching was a period of intense parental bonding. When I look back on that year, my heart glows and my eyes mist over. Furthermore, my employer's generous leave for parents—mothers and fathers alike—signaled to me that parents of both sex are valued as caregivers, and parents of either sex are well-suited for staying at home. In contrast, employers that limit parental leave to mothers reinforce the assumption that fathers are valued as breadwinners but not as caregivers.²⁰ Based on data from 2014, it is estimated that only twelve to fourteen percent of employers offer any paid parental leave to fathers.²¹ I consider myself extremely lucky.

20. See generally NANCY E. DOWD, *REDEFINING FATHERHOOD* 31, 132, 225 (2000) (critiquing the social construction of fatherhood as a breadwinning role).

21. SOC'Y FOR HUMAN RESEARCH MGMT., *2014 EMPLOYEE BENEFITS: AN OVERVIEW OF EMPLOYEE BENEFITS OFFERINGS IN THE U.S.* 30 (Katya Scanlan ed., 2014), <http://docplayer.net/157196-2014-employee-benefits-an-overview-of-employee-benefits-offerings-in-the-u-s-a-research-report-by-the-society-for-human-resource-management-shrm.html> (estimating twelve percent); KENNETH MATOS & ELLEN GALINSKY, *FAMILIES & WORK INST.*, 2014 NATIONAL STUDY OF

When my daughter was a few months old, I began exploring community events for infants and parents. Friends told me how fun it would be to take my daughter to Mommy and Me classes. One friend tried to reassure me that she was certain that even though they are called *Mommy* and Me classes, they would let a dad in too. When I eventually took my daughter to “Storytime” at our neighborhood library, I was delighted that the class was not officially named Mommy and Me. Yet, the Mommy and Me mentality is so engrained that one of the Storytime instructors still referred to the adults in the room collectively as moms, as though the few dads in attendance did not actually count. Experiences like this are just one particular manifestation of the cultural norm that equates caregiving with women. These instances may be small and inconsequential on their own, but the pervasiveness of these small occurrences reinforces expectations that fathers should leave caregiving to mothers.

My reaction to Mommy and Me classes is not exceptional. Many fathers have written about feeling alienated by Mommy and Me classes.²² Writing for the *Huffington Post*, John Whyte lamented the number of classes labeled Mommy and Me in his hometown of Washington, D.C., such as “Mommy and Me Yoga,” “Mommy and Me Music,” and “Mommy and Me Tender Twos.”²³ When Whyte asked if he could sign up for a Mommy and Me swim class, the receptionist gave a lukewarm response that fathers could enroll if they want.²⁴ Whyte eventually joined the swim class, and there was one other father in the program.²⁵ He believes that more dads would have joined the class if it

EMPLOYERS 6-7 (2014), <http://familiesandwork.org/downloads/2014NationalStudyOfEmployers.pdf> (estimating fourteen percent).

The rate of employers offering paid maternity leave differs depending on how maternity leave is defined. For example, the estimated rate is higher if maternity leave is defined to include short-term disability leave for new mothers. Meanwhile, the estimated rate is lower if the term only includes caregiving leave that is separate from short-term disability leave. Compare MATOS & GALINSKY, *supra*, at 6-7 (estimating that fifty-eight percent of employers offer maternity leave), with SOC’Y FOR HUMAN RESEARCH MGMT., *supra*, at 30 (estimating twelve percent).

Large corporations are more likely to offer paid parental leave, but paid leave is still often limited to mothers. According to a 2008 study of fifty-three Fortune 100 companies, seventy-four percent offered paid leave to mothers (defined to include disability leave), but only thirty-two percent offered paid leave to fathers. S. REP. NO. 111-1, at 51 (2009).

22. See, e.g., Dana Glazer, *Mommy and Me*, EVOLUTION DAD (July 17, 2009), <http://www.evolutionofdad.com/mommy-and-me>; Abdi Nazemian, *Op-ed: Daddy and Me*, ADVOCATE (Oct. 23, 2013, 9:00 AM), <http://www.advocate.com/commentary/2013/10/23/op-ed-daddy-and-me>; John Whyte, *Why Mommy and Me Programs Send the Wrong Message*, HUFFINGTON POST (Feb. 19, 2015, 9:34 PM), http://www.huffingtonpost.com/john-whyte-md-mph/why-mommy-and-me-programs-send-the-wrong-message_b_6693502.html.

23. Whyte, *supra* note 22.

24. *Id.*

25. *Id.*

had not been marketed as Mommy and Me. The Mommy and Me moniker is emblematic of a broader culture that excludes fathers from social programs for parents. In a 2012 study by the Boston College Center for Work and Family, at-home fathers reported other examples of exclusion, such as experiences of explicit rejection from community playgroups because they were men.²⁶

Down the street from the library, where my daughter and I attend Storytime, is a restaurant where I celebrated my first Father's Day as a father. The restaurant owner congratulated my husband and me on our daughter and gushed over our family. He also apologized that the men's room had no diaper changing table. He offered to let us use the changing table in the women's room. The owner's good intentions were heartwarming, yet I was troubled by the reminder that only women are expected to change diapers. Women are saddled with the responsibility, and men who do want to change diapers face barriers.

The issue of changing table access recently garnered heightened attention because of celebrity Ashton Kutcher, who became an outspoken advocate on the issue after becoming a father. He has bemoaned that "[t]here are NEVER diaper changing stations in mens [sic] public restrooms."²⁷ Kutcher has elaborated: "Having changing tables in men's rooms is just a tiny step in the process of rectifying legacy gender discrimination. Men who are aware of this bias want to participate equally in the child care process and our society should support that."²⁸ While Kutcher's efforts have caught the attention of media outlets such as the *Washington Post* and *USA Today*, the lack of "potty parity" remains a problem.²⁹ In Kutcher's home state of California, Governor Jerry Brown vetoed two bills in 2014 that would have made California the first state in the country to require public accommodations to grant men equal access to diaper changing tables.³⁰

My experience with the well-intentioned restaurant owner reminds me of the mixed feelings I have about the countless times that strangers

26. See BRAD HARRINGTON ET AL., B.C. CTR. FOR WORK & FAM., THE NEW DAD: RIGHT AT HOME 22 (2012), <http://www.bc.edu/content/dam/files/centers/cwf/pdf/The%20New%20Dad%20Right%20at%20Home%20BCCWF%202012.pdf>.

27. Sarah Larimer, *Ashton Kutcher Just Wants to Change His Kid's Diaper, Man*, WASH. POST (Mar. 25, 2015), <http://www.washingtonpost.com/news/parenting/wp/2015/03/25/ashton-kutcher-just-wants-to-change-his-kids-diaper-man> (quoting a Facebook post by Kutcher).

28. Isaac Saul, *You May Not Realize How Sexist Public Bathrooms Are Until You're a Parent*, A PLUS (Mar. 16, 2016), <http://aplus.com/a/gender-equality-diapers-ashton-kutcher-change> (quoting Kutcher).

29. See Ann Oldenburg, *Ashton Kutcher: More Public Changing Tables!*, USA TODAY (Mar. 11, 2015, 8:52 AM), <http://www.usatoday.com/story/life/people/2015/03/11/ashton-kutcher-wants-baby-changing-tables-in-mens-rooms/70137918>; Saul, *supra* note 28.

30. Larimer, *supra* note 27.

have approached my husband or me when one of us is out with our daughter performing ordinary tasks such as running errands. Strangers would praise us for “babysitting” or “helping out.”³¹ We usually respond by politely explaining that spending time with our daughter is not babysitting and, for me during my parental leave, caregiving was a full-time responsibility. I am touched by strangers’ well-intentioned remarks, but it is troubling that the bar for paternal caregiving is set so low that a mere trip to the bank with an infant constitutes grounds for praise. There is an unsettling double standard because strangers are very unlikely to lavish women with praise for “babysitting” their own children.

Other fathers feel strongly that the “babysitter” compliment is actually not a compliment at all but is rather insulting. As one columnist put it: “When people assume you’re only babysitting the kids, you feel like you’re doing something wrong; something that a man is not supposed to do.”³² Another at-home dad echoed this sentiment on his blog: “The idea behind [the babysitting comment] is pretty clear: that it’s somehow not my place to care for my own children. That I’m just keeping things under control until Mom—their rightful caregiver—returns.”³³ He implores his readers to stop calling him a babysitter.³⁴

Let me highlight just one more example of how our cultural environment sends the message that fathers should leave caregiving to women: the business of baby products. I had known all along that marketing campaigns often deploy “mothers know best” rhetoric and, at times, caricature fathers as absent and incompetent. However, I had not fully grasped the magnitude of this phenomenon until I became a father. For example, I was taken aback when my daughter turned six months old. Target congratulated me with an e-mail proclaiming, “Way to go, Mom!”³⁵ Target knew I was a new parent because I had become a member of BabyCenter, a parenting advice website that is one of Target’s corporate partners. Interestingly, Target assumed I was a woman simply because of my subscription to BabyCenter, even though

31. Cf. Karen Czapanskiy, *Volunteers and Draftees: The Struggle for Parental Equality*, 38 UCLA L. REV. 1415, 1418-22 (1991) (explaining that fathers are socially constructed as “volunteer” caregivers, while mothers are socially constructed as “draftees”).

32. Al Watts, *I’m Not Babysitting: Assumptions of an At-Home Dad*, ROLE REBOOT (Feb. 24, 2012), <http://www.rolereboot.org/family/details/2012-02-im-not-babysitting-assumptions-of-an-at-home-dad> (referring to fathers who act as primary caregivers).

33. Dave Nelson, “Dad’s Babysitting?,” RANTS STAY-AT-HOME DAD (May 10, 2014, 7:47 AM), http://didogetlaidoff.blogspot.com/2014/05/dads-babysitting_7306.html.

34. *Id.*

35. E-mail from BabyCenter Partner to author (Sept. 11, 2014, 3:15 PST) (on file with author) (emphasis added).

BabyCenter is technically open to both moms and dads.³⁶ When I followed a link in the e-mail to the “Target Baby” Facebook page, it became very clear that Target equates caregiving with women. Target describes its Target Baby Facebook page as a place where mothers can “share . . . collective *mommy* wisdom”—as though fathers are not expected to participate.³⁷

Sadly, Target is not the only company to market itself in ways that exclude fathers or, worse yet, reinforce the idea that fathers are unfit caregivers. During my first year as a parent, I received e-mails from The Children’s Place clothing company inviting me to join The Mom Space customer feedback forum.³⁸ The Children’s Place apparently assumed that I must be a mom, or at least some sort of honorary mom, because I shop for my child.³⁹ On occasion, I have contacted companies, asking them to reform their customer outreach policies. For example, I called General Mills to suggest that it add dads to their marketing materials for Kix cereal to balance out their longstanding mom-centric tagline: “Kid Tested, Mother Approved.”⁴⁰ I submitted a positive review of a baby food blender to Sage Spoonfuls, asking that it be added to the website’s testimonial page, the title of which should then be changed from “Mommy Buzz” to “Parent Buzz.”⁴¹ I signed an online petition for Amazon.com, Inc. (“Amazon”) to rename its “Amazon Mom” program.⁴² The program, which specializes in delivering products to

36. BabyCenter’s website even contains some content specifically geared toward dads. See *Just for Dads*, BABYCENTER, http://www.babycenter.com/302_just-for-dads_1519295.bc (last visited Nov. 26, 2016). When I signed up to become a BabyCenter member, I did not indicate whether I am a mom or dad.

37. Target Baby, *About*, FACEBOOK, https://www.facebook.com/TargetBaby/about/?ref=page_internal (last visited Nov. 26, 2016) (emphasis added).

38. See E-mail from The Mom Space to author (July 2, 2015, 6:04 PST) (on file with author); E-mail from The Mom Space to author (May 20, 2015, 3:19 PST) (on file with author).

39. At-home dads often oppose the “Mr. Mom” label because it reinforces the idea that caregiving should usually be left to women. See Brigid Schulte, *Don’t Call Them Mr. Mom: More Dads at Home with Kids Because They Want to Be*, WASH. POST (June 5, 2014), <https://www.washingtonpost.com/news/parenting/wp/2014/06/05/dads-who-stay-home-because-they-want-to-has-increased-four-fold> (discussing the National At-Home Dad Network’s resistance against the term Mr. Mom). The label Mr. Mom was popularized by the 1983 film bearing that name, which starred Michael Keaton as an at-home dad. MR. MOM (Metro-Goldwyn Meyers Studios Inc. 1983). For a thought-provoking argument that the term “mother” should be “unsexed” and, therefore, applied to both men and women who are primary caregivers, see Rosenblum, *supra* note 15, at 78-95.

40. Telephone Conversation with Customer Service Representative, General Mills (Aug. 31, 2014).

41. I submitted my testimonial to the Sage Spoonfuls online feedback form, but I never received a response. For the Sage Spoonfuls “Mommy Buzz” page of testimonials, see *Mommy Buzz*, SAGE SPOONFULS, <https://sagespoonfuls.com/mommybuzz/15> (last visited Nov. 26, 2016).

42. See Jeffrey Harrington, *Change the Name of the Amazon Mom Program to Amazon*

caregivers of young children, is technically open to fathers, but the Amazon Mom label implied that caregiving is, and should be, the domain of mothers. Unfortunately, these examples are part of a much longer list of marketing campaigns that contribute to the cultural erasure of caregiving dads.

On the brighter side, some companies have responded to the criticism that they wrongly conflate caregiving with motherhood. For instance, while I was still writing this Article, Amazon gave its Amazon Mom program a new name: “Amazon Family.”⁴³ Other companies have pulled advertisements that portray fathers with the most egregious of stereotypes. In 2012, Huggies diapers discontinued a television advertisement that portrayed fathers as too incompetent to change diapers.⁴⁴ The commercial stated: “To prove Huggies diapers and wipes can handle anything, we put them to the toughest test imaginable: dads, alone with their babies, in one house, for five days.”⁴⁵ This campaign provoked criticism, and the Huggies parent company, Kimberly Clark, replaced that advertisement with a new one that cast fathers in a better light.⁴⁶ The new advertisement portrayed fathers as responsible caregivers who cooked meals, fed their babies, and changed diapers.⁴⁷ More recently, in 2013, Clorox responded to criticism by removing a post on its website that mocked fathers as buffoons.⁴⁸ The post stated, “[l]ike dogs or other house pets, new dads are filled with good intentions, but lacking the judgment and fine motor skills to execute well.”⁴⁹ While it is heartening to know that companies are learning that they should not portray fathers as bumbling idiots, too many marketing campaigns still subtly reinforce the notion that caregiving is the domain of women.

Family, CHANGE.ORG, <https://www.change.org/p/jeff-bezos-change-the-name-of-the-amazon-mom-program-to-amazon-family> (last visited Nov. 26, 2016).

43. See Heidi Stevens, *Finally, Quietly, Amazon Mom Changes Its Name to Amazon Family*, CHI. TRIB. (Dec. 10, 2015, 11:58 AM), <http://www.chicagotribune.com/lifestyles/stevens/ct-amazon-family-dads-victory-balancing-20151210-column.html>. Interestingly, Amazon had already been calling the same program “Amazon Family” in other countries, including Canada, Japan, and the United Kingdom. See Andy Hinds, *Why ‘Amazon Mom’ Gets It Wrong*, DAILY BEAST (Mar. 8, 2015, 6:45 AM), <http://www.thedailybeast.com/articles/2015/03/08/why-amazon-mom-gets-it-wrong.html>.

44. See JOSH LEVS, ALL IN: HOW OUR WORK-FIRST CULTURE FAILS DADS, FAMILIES, AND BUSINESSES—AND HOW WE CAN FIX IT TOGETHER 119-20 (2015).

45. *Id.* at 119 (quoting a Huggies television commercial).

46. *Id.* at 120-21.

47. *Id.*

48. *Id.* at 123-24.

49. *Id.* at 123 (quoting the website for Clorox bleach products).

III. TAKING STOCK OF DELETERIOUS EFFECTS

The current cultural environment has deleterious effects on the well-being of men, women, and children. For fathers who undertake caregiving responsibilities, the cultural environment makes those responsibilities much more taxing than they should be. Fathers who are primary caregivers too often report feelings of stigma and social alienation, and experiences of being hyper-scrutinized.⁵⁰ In a 2014 NBC News poll, seventy-eight percent of at-home fathers stated that society underestimates them.⁵¹ A 2012 study commissioned by BabyCenter further found that fifty-four percent of at-home fathers believe men who stay home with children are stigmatized.⁵² While many at-home mothers also report feelings of stigma and social alienation, these experiences are more pronounced for at-home dads.⁵³ In the Boston College Center for Work and Family's 2012 study, at-home fathers reported alienating experiences that range from strangers scrutinizing how they dress their children due to beliefs that "dads don't know what they're doing," to rejection at parenting events because of their sex.⁵⁴ The study reported that "[i]n one particularly disturbing instance, one father described an encounter where he was confronted by a number of police officers who received a call about a 'suspicious' man carrying a baby while he was on a walk on a footpath through the woods in his own neighborhood."⁵⁵ To cope with these difficulties, at-home dads have formed support groups and a burgeoning network of "daddy blogs" that offer a sense of community.⁵⁶ While these are helpful resources, the discussions in these forums further illuminate obstacles that fathers face.⁵⁷

50. Joan C. Williams et al., *Cultural Schemas, Social Class, and the Flexibility Stigma*, 69 J. SOC. ISSUES 209, 220-21 (2013).

51. *A Look Inside the Life of a Stay-At-Home Dad*, TODAY (June 12, 2014), <http://www.today.com/video/today/55390516> (Today's Modern Dads Survey).

52. See Michele Madansky, *2012 The Changing Faces of the American Family: A 21st Century Mom Insights Series*, ADVERT. RES. FOUND. (Oct. 1, 2012), http://my.thearf.org/source/custom/downloads/2012-10_AW_ARF_People%20Forum_Presentation.pdf; see also Williams et al., *supra* note 50, at 221 (discussing studies that show working fathers tend to get stigmatized in the workplace if they request flexible schedules to attend to childcare and explaining that a "man who makes his caregiving responsibilities salient on the job often meets with . . . messages that he is not a real man").

53. HARRINGTON ET AL., *supra* note 26, at 13, 19-20.

54. *Id.* at 19-20; see also Dara E. Purvis, *The Sexual Orientation of Fatherhood*, 2013 MICH. ST. L. REV. 983, 998-99 (2013) (arguing that gay at-home dads are alienated by negative stereotypes beyond those experienced by heterosexual at-home dads).

55. HARRINGTON ET AL., *supra* note 26, at 20.

56. See *Find a Dad Group*, NAT'L AT-HOME DAD NETWORK, <http://athomedad.org/dad-groups/find-a-dad-group> (last visited Nov. 26, 2016) (providing a national directory of support groups for at-home dads).

57. In one particularly troubling case, for example, an at-home dad blogged about a moms

Facets of our culture, such as those discussed earlier (for example, the rarity of paternity leave, the emphasis on moms in Mommy & Me classes, and the lack of changing tables in men's restrooms), are powerful symbols reinforcing the notion that fathers should not be caregivers. This makes the work of paternal caregiving all the more difficult for men who buck convention by undertaking caregiving roles. For the most part, at-home fathers rise to the occasion and report that the experience of being a primary caregiver is extremely meaningful.⁵⁸ In this regard, at-home fathers and women in male-dominated workplaces share some similarities. Both groups face challenges because they defy traditional gender roles.⁵⁹ Despite the obstacles that women face under such circumstances, they often find their work to be meaningful and are successful at overcoming the obstacles.⁶⁰ This, of course, does not suggest that the obstacles should not be dismantled.

In addition to burdening men who are already primary caregivers, cultural forces place undue pressure to conform upon men who are still deciding how engaged to be as a parent. Recent studies suggest that many men believe they will be very engaged in caregiving, but after actually having a child, they fall back into traditional gender roles.⁶¹ In research by the Boston College Center for Work and Family, two-thirds of married fathers said they believed in equal caregiving, but only one-third actually took on an equal share of caregiving after becoming a dad.⁶² Likewise, more than half of fathers said they would consider being an at-home dad, yet far fewer men actually become at-home dads.⁶³ This pattern exists even among millennials, the generation that

group that voted to exclude dads because they believed "the risk was too great that a dad might be a predator." Chris Routly, *I'm a Stay-At-Home Dad: How We Make It Work Socially and Financially*, XOJANE (June 12, 2012), <http://www.xojane.com/family/im-stay-home-dad-how-we-make-it-work-socially-and-financially>.

58. See DOWD, *supra* note 20, at 42-43 (citing social science research to suggest that assuming a nurturing role is often a positive and transformative emotional experience for fathers); see also HARRINGTON ET AL., *supra* note 26, at 13-33 (summarizing interviews of at-home dads and their wives about the impact of having the father be the primary caregiver).

59. For an examination of the gender stereotypes that women confront in workplace settings, see, for example, Madeline E. Heilman, *Gender Stereotypes and Workplace Bias*, 32 RES. ORGANIZATIONAL BEHAV. 113, 114-17 (2012).

60. For a classic law review article discussing the ways that women and people of color negotiate stereotypes to succeed on the job, see Devon W. Carbado & Mitu Gulati, *Working Identity*, 85 CORNELL L. REV. 1259, 1263-66 (2000).

61. See BRAD HARRINGTON ET AL., B.C. CTR. FOR WORK & FAM., *THE NEW DAD: CARING, COMMITTED AND CONFLICTED* 31 (2011) ("Most of the fathers in our study aspire to share equally in caregiving with their spouse/partner, but often are unable to bring this desire to reality.").

62. *Id.* at 22-23.

63. *Id.* at 17, 23.

tends to be most supportive of eschewing gender roles.⁶⁴ According to the Center for Talent Innovation, twenty-four percent of millennial men said they expect to be a primary caregiver for their children, but that figure is only eight percent among millennial men who actually have children.⁶⁵ Men who do take a more hands-on approach to parenting often report positive life-changing experiences that bond them to their children and deepen their sense of humanity.⁶⁶ It is a shame that more men do not follow through on their initial desires to pursue these transformative experiences.

What accounts for this difference between initial inclinations toward caregiving and lack of follow-through? Many aspects of the current cultural environment probably contribute to this divergence. Men may desire a hands-on approach to providing care for their children, but when a child actually enters a man's life, he feels the weight of cultural pressures to conform to traditional gender roles. The cultural dynamics explored earlier all pressure men to suppress desires to be a primary or co-equal caregiver. These cultural forces constrain men's decision-making about the type of father they want to be.⁶⁷

The fact that the cultural environment deters men from assuming caregiving roles is harmful to women as well. Deterrence of paternal caregiving perpetuates the heavy burden placed on mothers. This burden is particularly problematic for women who wish that their male partners would contribute more to childcare so that they could devote more energy to developing their careers. Many feminists have made the argument that women's advancements in employment are linked to men's participation in childcare. Susan Moller Okin was one of the earlier feminist voices to articulate this connection.⁶⁸ More recently, Sheryl Sandberg and Anne-Marie Slaughter have both published best-

64. See Claire Cain Miller, *Millennial Men Aren't the Dads of Their Hopes*, N.Y. TIMES, Aug. 1, 2015, at A1.

65. *Id.* Similarly, the Families and Work Institute reported that only thirty-five percent of employed millennial men without children believe in gendered parenting roles. *Id.* However, among millennial men who have children, a majority believe that women should be primary caregivers. *Id.*

66. See DOWD, *supra* note 20, at 42-43 (discussing social science research on the emotional impact experienced by fathers who perform nurturing roles); see also MARTHA C. NUSSBAUM, SEX & SOCIAL JUSTICE 272-73 (1999) (arguing that a man's emotional capacity transforms when he performs caregiving responsibilities).

67. For discussion on economic factors that also constrain men's decision-making about caregiving, see *infra* text accompanying notes 90-92.

68. See SUSAN MOLLER OKIN, JUSTICE, GENDER, AND THE FAMILY 175-77 (1989) (calling for law reform to encourage equal parenting roles between men and women); see also Kathleen M. Sullivan, *Constitutionalizing Women's Equality*, 90 CALIF. L. REV. 735, 752 (2002) ("[E]mpowering women . . . depends upon freeing both men and women from the gender roles in which historical socialization has trapped them.").

selling books that echo this claim.⁶⁹ In her book, *Lean In, Women, Work, and the Will to Lead*, Sandberg argues that empowering women at work requires “empowering” men as caregivers at home.⁷⁰ Likewise, Slaughter has trumpeted “the feminism of empowered dads.”⁷¹ Both Sandberg and Slaughter use the language of “empowerment,” which might seem counterintuitive because men are already empowered—indeed, over-empowered with male privilege—in so many regards.⁷² However, when it comes to paternal caregiving, men need to be empowered to overcome cultural constraints.⁷³

The current cultural environment is also harmful to children, particularly those who currently rely on fathers as primary caregivers. When our culture creates caregiving obstacles for dads, children experience the consequences. For example, when a father cannot access a diaper changing station, his child ultimately suffers. Beyond such tangible considerations, older children also experience the stigma of nonrecognition. When society acts as though families with at-home dads do not—or should not—exist, children in such families are dealt a dignitary blow. As philosopher Charles Taylor has explained: “Nonrecognition or misrecognition . . . can inflict a grievous wound, saddling its victims with crippling self-hatred. Due recognition is not just a courtesy we owe people. It is a vital human need.”⁷⁴ Although Taylor was writing about the nonrecognition of minority ethnic and cultural groups, his remarks also apply to the nonrecognition of minority family forms.⁷⁵

69. SHERYL SANDBERG WITH NELL SCOVELL, *LEAN IN: WOMEN, WORK, AND THE WILL TO LEAD* 104-20 (2013); ANNE-MARIE SLAUGHTER, *UNFINISHED BUSINESS* 126-69 (2015).

70. See SANDBERG WITH SCOVELL, *supra* note 69, at 104-20.

71. See Anne-Marie Slaughter, *Relax. Dad's Got This.*, WASH. POST, June 21, 2015, at B1; see also SLAUGHTER, *supra* note 69, at 126 (“The next phase of the women’s movement is a men’s movement.”).

72. SANDBERG WITH SCOVELL, *supra* note 69, at 108; SLAUGHTER, *supra* note 71.

73. See SLAUGHTER, *supra* note 69, at 130.

74. Charles Taylor, *The Politics of Recognition*, in *MULTICULTURALISM: EXAMINING THE POLITICS OF RECOGNITION* 25-26 (Amy Gutmann ed., 1994); see also Axel Honneth, *Integrity and Disrespect: Principles of a Conception of Morality Based on the Theory of Recognition*, 20 POL. THEORY 187, 188-89, 191 (1992) (“[W]e owe our integrity . . . to the receipt of approval or recognition from other persons. . . . [Nonrecognition] is injurious because it impairs . . . persons in their positive understanding of self—an understanding acquired by intersubjective means. . . . [Nonrecognition includes] denigration of individual or collective life-styles . . .”). Recently, in *Obergefell v. Hodges*, the U.S. Supreme Court explained that barring same-sex marriage deprived same-sex couples and their children proper recognition and, as a result, “children suffer the stigma of knowing their families are somehow lesser.” 135 S. Ct. 2584, 2590 (2015).

75. Cf. Holning Lau, *Transcending the Individualist Paradigm in Sexual Orientation Antidiscrimination Law*, 94 CALIF. L. REV. 1271, 1276-80 (2006) (arguing that nonrecognition and misrecognition of same-sex couples is injurious).

In sum, the current cultural environment's treatment of paternal caregivers is harmful on several fronts. It is bad for men, women, and children. The following Parts examine potential public policies aimed at improving cultural expectations about paternal caregiving.⁷⁶

IV. WORKPLACE POLICY REFORMS AND THEIR LIMITATIONS

In an effort to facilitate paternal caregiving, legal commentators have focused on reforming workplace rules, especially parental leave policies.⁷⁷ Proposals for reforming parental leave are twofold. First, there has been a campaign for federal legislation to mandate paid parental leave.⁷⁸ Second, many commentators have championed the idea that a certain amount of parental leave must be set aside specifically for fathers.⁷⁹ In this Part, I begin by outlining these proposals.⁸⁰ Afterwards, I explain why focusing on workplace reforms has substantial limitations that have been underexplored.⁸¹

A. Paid Parental Leave

The United States is the only high-income country that does not require employers to provide any paid parental leave.⁸² A 2013 study found that, out of 186 countries surveyed, 178 gave mothers a right to paid parental leave, and 81 countries extended paid parental leave to fathers.⁸³ In the United States, roughly sixty percent of the workforce is covered by the Federal Family and Medical Leave Act ("FMLA"),⁸⁴ which grants mothers and fathers a right to *unpaid* parental leave, but not *paid* leave.⁸⁵ At the state level, only California, New Jersey, and

76. See *infra* Parts IV–V.

77. This Part focuses on proposals for paid parental leave; however, commentators have also explored other ways to reform workplace culture, such as the promotion of flexible work schedules and telecommuting.

78. See Office of the Press Sec'y, *Fact Sheet: White House Unveils New Steps to Strengthen Working Families Across America*, WHITE HOUSE (Jan. 14, 2015), <https://www.whitehouse.gov/the-press-office/2015/01/14/fact-sheet-white-house-unveils-new-steps-strengthen-working-families-acr>; *infra* text accompanying notes 94–98.

79. See *infra* text accompanying notes 104–20.

80. See *infra* Part IV.A.

81. See *infra* Part IV.B.

82. See JODY HEYMANN WITH KRISTEN MCNEILL, *CHILDREN'S CHANCES: HOW COUNTRIES CAN MOVE FROM SURVIVING TO THRIVING* 136 (2013).

83. *Id.* at 136, 138.

84. JACOB ALEX KLERMAN ET AL., ABT ASSOCS. INC., *FAMILY AND MEDICAL LEAVE IN 2012: TECHNICAL REPORT* 21 (2012), <https://www.dol.gov/asp/evaluation/fmla/fmla-2012-technical-report.pdf> (estimating that 59.2 percent of employees are covered by the FMLA).

85. Family and Medical Leave Act (FMLA) of 1993, 29 U.S.C. § 2601(b)(4) (2012).

Rhode Island require some form of paid parental leave.⁸⁶ New York passed a law requiring paid parental leave that will begin to take effect in 2018.⁸⁷ Studies suggest that most Americans work for employers who do not offer paid parental leave.⁸⁸ According to the U.S. Department of Labor, “[o]nly 13 percent of men who took parental leave [in 2012] received pay compared with 21 percent for women.”⁸⁹

Many parents simply do not have the financial means to take an extended period of unpaid leave. Even if parents can afford unpaid leave, they may work in a workplace that pressures employees not to exercise their right to leave.⁹⁰ Men are even less likely than women to take unpaid leave.⁹¹ Both economic and cultural factors might explain why the rate of taking leave is particularly low among fathers. Men still tend to make more money at work than women. Thus, when different-sex couples decide to forego a source of income so that one parent can stay home, a smaller economic loss is incurred if the woman leaves the workforce.⁹² Even when a family can afford to have the father take unpaid parental leave, he may elect not to take leave due to pressure at

86. 28-48 R.I. CODE R. § 2 (LexisNexis 2016); *Family Leave Insurance*, ST. N.J. DEP’T LAB. & WORKFORCE DEV., <http://lwd.state.nj.us/labor/fli/fliindex.html> (last visited Nov. 26, 2016) (describing New Jersey’s paid family leave policy); *Paid Family Leave (PFL)—Forms and Publications*, ST. CAL. EMP. DEV. DEP’T, http://www.edd.ca.gov/disabilityPFL_Forms_and_Publications.htm (last visited Nov. 26, 2016) (describing California’s paid family leave policy).

87. Camila Domonoske, *A Big Week for Parents: New York State, San Francisco Establish Paid-Leave Laws*, TWO-WAY (Apr. 6, 2016, 3:59 PM), <http://www.npr.org/sections/thetwo-way/2016/04/06/473226596/a-big-week-for-parents-new-york-state-san-francisco-establish-paid-leave-laws>.

88. Estimates on the number of employers offering paid leave in the United States vary based on research methodology, including how “paid parental leave” is defined. Two recent studies suggest that twelve to fifty-eight percent of employers in the United States offer paid parental leave to women, while only twelve to fourteen percent offer paid parental leave to fathers; the statistics for women vary in large part based on whether disability leave for new mothers counts as “parental leave.” See SOC’Y FOR HUMAN RESEARCH MGMT., *supra* note 21, at 30-31; MATOS & GALINSKY, *supra* note 21, at 6-7; see also KLERMAN ET AL., *supra* note 84, at 34 (finding, from a survey, that twenty-one percent of mothers who took parental leave reported receiving paid leave, as compared with thirteen percent of fathers).

89. U.S. DEP’T OF LABOR, DOL POLICY BRIEF: PATERNITY LEAVE: WHY PARENTAL LEAVE FOR FATHERS IS SO IMPORTANT FOR WORKING FAMILIES 2 (2012).

90. See David S. Pedulla & Sarah Thébaud, *Can We Finish the Revolution? Gender, Work-Family Ideals, and Institutional Constraint*, 80 AM. SOC. REV. 116, 120-21 (2015) (discussing the impact of intense work culture on the rate at which parents take leave in the United States).

91. A 2012 report commissioned by the Department of Labor found, “[w]omen are a third more likely to take [unpaid FMLA] leave than men.” KLERMAN ET AL., *supra* note 84, at 64. That figure includes all FMLA leave, including medical leave, parental leave, and other caregiving leaves. For discussions on men’s lower rates of taking unpaid parental leave, see Lisa Bornstein, *Inclusions and Exclusions in Work-Family Policy: The Public Values and Moral Code Embedded in the Family and Medical Leave Act*, 10 COLUM. J. GENDER & L. 77, 94-95 (2000) and Cunningham-Parmeter, *supra* note 15, at 12-13.

92. Bornstein, *supra* note 91, at 96 (discussing leave-taking rates of fathers).

work and the surrounding culture that suggests the main responsibility of fathers is breadwinning, not caregiving.⁹³

Calls for legislation requiring paid parental leave have grown in recent years, with President Obama proclaiming his support for such reforms.⁹⁴ In Congress, Senator Kirsten Gillibrand and Representative Rosa DeLauro have proposed the Family and Medical Insurance Leave Act (“Family Act”).⁹⁵ This federal law would create a paid parental leave program similar to the ones that exist in California, New Jersey, and Rhode Island.⁹⁶ A payroll deduction scheme would fund paid leave for new mothers and fathers.⁹⁷ New parents would receive two-thirds of their wages up to a capped amount for up to twelve weeks.⁹⁸

Experience suggests, however, that simply offering fathers paid leave has a relatively small impact on fathers’ behaviors.⁹⁹ For example, California’s paid parental leave scheme has been in effect for over a decade, and fathers in California are still much less likely than mothers to take paid parental leave.¹⁰⁰ Among the fathers who do take paid parental leave, they usually take only a fraction of the time allowed—an average of roughly one week.¹⁰¹ Experience in other countries also comports with this pattern. For example, in Nordic countries, mandating paid parental leave did not have as strong an impact on new fathers as lawmakers had hoped.¹⁰² Even after paid leave became available

93. CATHERINE R. ALBISTON, INSTITUTIONAL INEQUALITY AND THE MOBILIZATION OF THE FAMILY AND MEDICAL LEAVE ACT: RIGHTS ON LEAVE 167-84 (2010) (discussing institutional constraints on men taking FMLA leave); Pedulla & Thébaud, *supra* note 90, at 121 (“[S]upportive [workplace] policies alone may not fully eliminate gendered patterns, given the resilience of shared beliefs and expectations about gender and work in American culture.”).

94. Office of the Press Sec’y, *supra* note 78.

95. Senator Gillibrand and Representative DeLauro first introduced the Family Act in 2013 and have been advocating for it every year since then. For background on the Family Act, see Jane Farrell & Sarah Jane Glynn, *The Family Act: Facts and Frequently Asked Questions*, CTR. AM. PROGRESS (Dec. 12, 2013), <https://www.americanprogress.org/issues/labor/report/2013/12/12/81037/the-family-act-facts-and-frequently-asked-questions>.

96. *Id.*

97. *Id.*

98. *Id.*

99. See Cunningham-Parmeter, *supra* note 15, at 52-54.

100. *Id.* at 52-53 (“In California . . . women still constitute nearly three-quarters of workers who take so-called [paid] ‘bonding leave’ to care for newborns, and the average mother’s leave is four times longer than the average father’s.”). I suspect that the low rate of fathers taking leave results from both the cultural and economic factors discussed in *supra* notes 90-93 and accompanying text. Because California provides parents on leave with only a portion of their wages, there are still economic incentives to forego taking leave.

101. Cunningham-Parmeter, *supra* note 15, at 44.

102. See Linda Barclay, *Liberal Daddy Quotas: Why Men Should Take Care of the Children, and How Liberals Can Get Them to Do It*, 28 HYPATIA 163, 168-70 (2013) (discussing experiences in Denmark, Iceland, Norway, and Sweden); see also Cunningham-Parmeter, *supra* note 15, at 14-15 (focusing on Sweden).

to new fathers, the rate of fathers taking leave still lingered behind that of women.¹⁰³

To further encourage paternal caregiving, Norway developed what are now referred to as “daddy quotas.”¹⁰⁴ Under the original Norwegian program in 1993, a child’s two parents were entitled to a total of thirty-three weeks of paid parental leave, and four of those weeks were set aside specifically for the father.¹⁰⁵ This quota system was a use-it-or-lose-it program.¹⁰⁶ If the father did not use his four weeks, he could not transfer that time to the mother.¹⁰⁷ Norway has since increased the daddy quota to ten weeks.¹⁰⁸ The quota system now also applies to same-sex parents, such that ten weeks are set aside for each parent in a same-sex relationship.¹⁰⁹ Sweden and Iceland followed Norway’s lead, becoming the second and third countries to have their own quota systems.¹¹⁰

Sweden has garnered a lot of attention due to the generosity of its program.¹¹¹ Sweden offers 480 days of paid parental leave to couples.¹¹² For 390 of those days, parents are paid eighty percent of their wages and are eligible to be paid at a flat-rate for the remaining 90 days.¹¹³ Of those 480 days, 90 are set aside for each parent, and the couple receives a tax credit if they divide the remainder of their shared leave equally.¹¹⁴ Meanwhile, Iceland has adopted a 3-3-3 quota system.¹¹⁵

103. See Cunningham-Parmeter, *supra* note 15, at 14-16.

104. For background reading on daddy quotas, also referred to as “fathers quotas,” see Barclay, *supra* note 102, at 168-75 and Linda Haas & Tine Rostgaard, *Fathers’ Rights to Paid Parental Leave in the Nordic Countries: Consequences for the Gendered Division of Leave*, 14 COMMUNITY WORK & FAM. 177, 180, 186, 191 (2011).

105. See Haas & Rostgaard, *supra* note 104, at 180 (comparing Nordic parental leave policies).

106. *Id.*

107. *Id.*

108. *Id.*

109. See Ann-Zofie Duvander & Johanna Lammi-Taskula, *Parental Leave*, in PARENTAL LEAVE, CHILDCARE AND GENDER EQUALITY IN THE NORDIC COUNTRIES 39-42 (Guðny Björk Eydal & Ingólfur V. Gíslason eds., 2012). For further information on Norway’s parental leave quotas, see *Paternal Quota (Paternity Leave), Maternal Quota and Shared Period*, NAV (Aug. 18, 2014), <https://www.nav.no/en/Home/Benefits+and+services/Relatert+informasjon/Paternal+quota+%28paternity+leave+%29%2C+maternal+quota+and+shared+period.353596.cms>.

110. See Haas & Rostgaard, *supra* note 104, at 179 (noting that Sweden enacted its quota system in 1995, and Iceland enacted its system in 2001). Although Denmark established a fathers quota in 1997, it was abolished in 2002. See *id.* at 180.

111. See, e.g., Katrin Bennhold, *Paternity Leave Law Helps to Redefine Masculinity in Sweden*, N.Y. TIMES, June 15, 2010, at A6.

112. See Haas & Rostgaard, *supra* note 104, at 184 (comparing Sweden’s parental leave policies to those of other Nordic countries). For the latest information on Sweden’s parental leave policies, see *Parental Benefits*, FÖRSÄKRINGSKASSAN, <http://www.forsakringskassan.se> (select “In English” at the bottom of the page; follow the “Parents” hyperlink; select “If you are expecting a child”; then follow the “Parental benefits” hyperlink) (last visited Nov. 26, 2016).

113. Haas & Rostgaard, *supra* note 104, at 184.

114. *Id.*

Three months are set aside for the first parent; another three are designated for the second parent; and the remaining three months can be taken by either parent.¹¹⁶

These quota systems have proved successful at promoting paternal caregiving. The rate of fathers taking parental leave has increased markedly, reaching as high as ninety percent in Sweden.¹¹⁷ Moreover, reports suggest that the quotas helped to reshape cultural conceptions of fatherhood.¹¹⁸ As a result, paternal caregiving is not limited to the time of the daddy quota. Even after fathers in Nordic countries return to work after taking leave, they are more likely to stay engaged and perform caregiving tasks that were traditionally associated with women.¹¹⁹

B. Beyond Paid Parental Leave

For legal scholars who are interested in reshaping the role of men in childcare, workplace leave policies have been the target of reform, and the Nordic countries' daddy quotas have been admired as a model.¹²⁰ I too support legal reform to institutionalize paid parental leave and a quota system inspired by the Nordic experience. What I want to do in this Article, however, is encourage us to expand our conversation beyond workplace policies. We need to look at the broader cultural environment in which workplace leave policies are situated.¹²¹ I say this because I am mindful of what comparative law scholars call the problem with "legal transplantation."¹²² That is to say, practical difficulties often emerge when we try to lift and transplant a legal solution from one cultural context to another. Thus, reforming workplace leave policies based on Nordic policy precedents has its limitations.

115. *Id.* at 183.

116. *Id.* at 180-81, 183. For the latest information on Iceland's parental leave policies, see *Maternity/Paternity Leave*, FJÖLMENNINGARSETUR, <http://www.mcc.is/english/family/maternity--paternity-leave-> (last visited Nov. 26, 2016).

117. Maria del Carmen Huerta et al., *Fathers' Leave, Fathers' Involvement and Child Development: Are They Related? Evidence from Four OECD Countries* 16 (OECD Soc., Emp't & Migration Working Papers, No. 140, 2013).

118. *Id.*

119. *Id.*

120. See, e.g., Cunningham-Parmeter, *supra* note 15, at 48-55; Rosenblum, *supra* note 15, at 112-14; Selmi, *supra* note 15, at 770-73; see also Kathryn Kroggel, *Absent Fathers: National Paid Paternity Leave for the United States—Examination of Foreign and State-Oriented Models*, 23 PENN ST. INT'L L. REV. 439, 460-61 (2004).

121. Cf. Dowd, *supra* note 5, at 1067-81 (acknowledging that cultural reform must accompany structural reforms such as modifications to parental leave policies).

122. For background on the legal transplantation trope, see Máximo Langer, *From Legal Transplants to Legal Translations: The Globalization of Plea Bargaining and the Americanization Thesis in Criminal Procedure*, 45 HARV. INT'L L.J. 1, 29-35 (2004).

To begin, consider the cultural environment in Norway before it became the first country to enact daddy quotas in 1993.¹²³ Norway was already at a very different place culturally than the United States is today. Prior to adopting daddy quotas, Norway already had in force the Act Relating to Gender Equality (“Gender Equality Act”), which goes farther than any current U.S. federal law to combat gender stereotypes.¹²⁴ By the late 1970s, Norwegian law went so far as to regulate gender stereotyping in advertisements.¹²⁵ In 1981, Gro Harlem Brundtland became Norway’s first female Prime Minister.¹²⁶ During her second administration, forty-four percent of the ministers in her cabinet were women.¹²⁷ That figure rose to forty-seven percent during her third administration.¹²⁸ In 1988, the Norwegian government expanded the Gender Equality Act to require that all public committees have no less than forty percent membership of either sex.¹²⁹ Thus, gender quotas were already part of Norway’s socio-legal fabric well before daddy quotas were added to Norway’s parental leave scheme. Importantly, Norway not only addressed gender stereotyping of women but also stereotyping of men. In 1986, the government established the Commission on the Role of Men, which developed plans for increasing men’s participation in childcare, ultimately leading to the enactment of daddy quotas in 1993.¹³⁰

The contrast between Norway in 1993 and the United States today is striking. While the U.S. Supreme Court has repeatedly stated that laws and public policies cannot be based on “fixed notions concerning the roles and abilities of males and females,”¹³¹ and several civil rights statutes bar sex discrimination,¹³² the United States has not been as

123. See Haas & Rostgaard, *supra* note 104, at 180.

124. For example, the Gender Equality Act calls for affirmative action programs to foster women’s participation in traditionally male-dominated institutions. See Lov om likestilling mellom kjonnene [Act Relating to Gender Equality] §§ 7, 12–13 (Nor.).

125. See Sidsel G. Sverdrup & Eivind Sto, *Regulation of Sex Discrimination in Advertising: An Empirical Inquiry into the Norwegian Case*, 14 J. CONSUMER POL’Y 371, 376–77 (1992) (describing Marketing Control Act in Norway, which was enacted to address sex equality).

126. Trine Rogg Korsvik, *Gender Equality Policies in Norway: “Everybody’s Job, Nobody’s Responsibility”?* 21 (Jagiellonian Univ. of Krakow, Working Paper No. 2.1, 2014).

127. *Id.* at 21, 23.

128. See *Brundtland’s Third Cabinet*, REGJERINGEN.NO, https://www.regjeringen.no/no/om=regjeringa/tidligere/ministerier_regjeringer/nyere_tid/regjeringer/gro-harlem-brundtlands-tredje-regjering-/id438731 (last updated Dec. 20, 2013).

129. Act Relating to Gender Equality § 13 (Nor.); Korsvik, *supra* note 126, at 21–22.

130. Korsvik, *supra* note 126, at 23–24.

131. *United States v. Virginia*, 518 U.S. 515, 541 (1996); *Miss. Univ. for Women v. Hogan*, 458 U.S. 718, 724–25 (1982).

132. See 20 U.S.C. § 1681 (2012); 42 U.S.C. § 2000e-2 (2012); see also 29 U.S.C. § 206(d)(1) (2012).

aggressive as Norway in combatting gender stereotypes. For example, the U.S. government does not police gender stereotyping in media, and it has not resorted to gender quotas in public policies.¹³³ The difference between the two countries is also evident in the fact that mainstream media outlets still question whether the United States is ready for a female president, while Norway already had its first female head of government over a decade prior to the enactment of daddy quotas.¹³⁴ Like Norway, Sweden and Iceland had gone to great lengths to combat gender stereotypes prior to adopting their systems of parental leave quotas.¹³⁵

Differences in cultural context—between Nordic countries in the early 1990s and the United States today—pose difficulties for transplanting daddy quotas from one setting to the other. These difficulties can emerge at both the front and back ends of reform. At the front end, it will probably be difficult getting the U.S. government to legislate daddy quotas until the cultural climate changes. Cultural precursors in the Nordic countries, including progressive public policies pertaining to gender, were already in place prior to the enactment of daddy quotas.¹³⁶ In contrast, the current cultural environment in the United States makes it unlikely that daddy quotas will be legislated here.

Cultural differences also create difficulties at the back end of reform after legislation is passed. I would be delighted if we could somehow muster the political support to mandate parental leave

133. For discussion of Norway's regulations in these areas, see *supra* text accompanying notes 123-30.

134. E.g., Katherine Speller, *Is America Ready for a Woman President—Finally?*, MTV NEWS (Apr. 10, 2015), <http://www.mtv.com/news/2129271/hillary-clinton-america-ready-for-female-presidents> (“[T]he question of whether the country is ready for a woman to take our highest elected office seem[s] to linger.”); Jonathan Van Meter, *Will Hillary Clinton Make History?*, VOGUE (Feb. 17, 2016, 5:00 AM), <http://www.vogue.com/13393672/hillary-clinton-democratic-candidate-primary-2016-election> (“[I]s the United States ready for its first female president? Why is this still such a hurdle for women in our country?”).

135. For discussions of feminist public policies in Sweden and Iceland, see Cary Franklin, *The Anti-Stereotyping Principle in Constitutional Sex Discrimination Law*, 85 N.Y.U. L. REV. 83, 97-105 (2010), which discusses Sweden, and Ctr. for Gender Equal., *Gender Equality in Iceland*, MINISTRY SOC. AFF. & SOC. SECURITY, https://www.althingi.is/pdf/wip/Stepping_stones.pdf (last visited Nov. 26, 2016), which provides a timeline of feminist legal and social milestones in Iceland.

136. While this Article focuses on differences in gender dynamics, it is also worth highlighting another dimension of contrast between the United States and Nordic countries: libertarian ideologies are much more popular in the United States. This resistance to restrictions on choice creates impediments to legislating daddy quotas. Compare POLITICISING PARENTHOOD IN SCANDINAVIA: GENDER RELATIONS IN WELFARE STATES 1, 6-10 (Anne Lise Ellingsæter & Arlaug Leira eds., 2006) (describing the history of socialist policies in Nordic and Scandinavian states), with Angela P. Harris, *From Stonewall to the Suburbs?: Toward a Political Economy of Sexuality*, 14 WM. & MARY BILL RTS. J. 1539, 1552-61 (2006) (identifying libertarian and neoliberal trends in the United States concerning family life).

allocation quotas, yet I still worry that the results would not be as robust as the results in Nordic countries.¹³⁷ The financial incentive created by such quotas would probably prompt more American fathers to take parental leave than in prior years. Passing a quota law that designates parental leave to fathers would also, in and of itself, send a cultural message that helps to demystify paternal caregiving. Yet, I worry that too many men would still forego paternal leave because of countervailing cultural factors that continue to alienate stay-at-home dads.¹³⁸

Accordingly, we need to attend to the broader cultural environment surrounding fatherhood. Let us call this an ecological approach to reshaping expectations about paternal caregiving. This approach requires us to address the various ways that culture manifests in our physical and social environment. Our physical environment includes cultural markers, such as the location of diaper changing tables. Of course, culture also manifests in less tangible ways. Culture exists in a social atmosphere that is not corporeal. Yet, just as the government can regulate the natural atmosphere by addressing inputs such as carbon emissions, the government can also influence our social atmosphere through inputs such as media, education, and community events.

Taking an ecological approach to fatherhood comports with the present trajectory of family law scholarship. In a recent article, Maxine Eichner likened current family law scholarship to a camera lens “zooming back.”¹³⁹ Scholars from earlier decades generally debated questions about what types of families warrant legal recognition and how the state should intervene in intra-family disputes.¹⁴⁰ More recently, however, family law scholarship has sought to address how ecological factors influence the ways that families function¹⁴¹: “[T]he emerging

137. I use the phrase “daddy quota” in this Article because it has become so widely adopted. I would, however, prefer that any future quotas in the United States be referred to as “parental leave allocation quotas.” This label would more accurately convey that a certain amount of parental leave is designated to each parent regardless of the parent’s gender. Thus, in the case of lesbian parents, each mother would be allocated a certain amount of parental leave, encouraging each parent to take time off from work to bond with her new child.

138. Cf. Pedulla & Thébaud, *supra* note 90, at 121 (“[S]upportive [workplace] policies alone may not fully eliminate gendered patterns, given the resilience of shared beliefs and expectations about gender and work in American culture.”).

139. Maxine Eichner, *The Family, in Context*, 128 HARV. L. REV. 1980, 1981 (2015) (book review).

140. *See id.*

141. While Eichner has identified this burgeoning of legal scholarship that takes an ecological approach, the ecological approach is not entirely new. *See* Linda C. McClain, *Is There a Way Forward in the “War over the Family?”*, 93 TEX. L. REV. 705, 717-23 (2015) (book review) (identifying writings by Mary Ann Glendon and Barbara Woodhouse from the 1990s as early examples of family law scholarship that adopted ecological approaches).

scholarship of the 2010s situates families, including nontraditional families, within their surrounding world.”¹⁴² This growing literature has examined how families are affected by a diverse set of factors such as income inequality, zoning regulations, land use laws, and incarceration policies.¹⁴³ In the remainder of this Article, I hope to inspire readers to take a similarly broad approach to the specific issue of paternal caregiving, rather than focus narrowly on workplace leave policies.¹⁴⁴ The following Part sketches a series of interventions that could help to reshape the cultural environment that surrounds paternal caregiving.¹⁴⁵

V. TOWARD ECOLOGICAL REFORM

As writers before me have explained, the state plays an important role in supporting familial caregiving relationships.¹⁴⁶ This Part focuses on how the state could foster an environment that better supports paternal caregiving.¹⁴⁷ To spur conversation on the role of the state, this Part examines three areas of law and public policy that are ripe for reform: physical infrastructure, community events programming, and media campaigns.¹⁴⁸ On their own, each of the reform proposals discussed below may seem extremely narrow. Yet, treating these narrow targets collectively could produce expansive change.

A. Physical Infrastructure

The physical infrastructure around us plays a large role in the reproduction of cultural norms. For example, the lack of changing tables in men’s restrooms reinforces the cultural practice of conflating caregiving with motherhood. Regulating men’s access to changing tables is one way that the state could help to reshape our cultural environment. Restrooms have long been sites of government regulation. For example,

142. Eichner, *supra* note 139, at 1981-82.

143. *Id.* at 1981-82, 1996.

144. Other commentators have already begun to examine how public policies beyond the workplace can be reconfigured to better support paternal caregiving, but these analyses remain rare. See Camille Gear Rich, *Innocence Interrupted: Reconstructing Fatherhood in the Shadow of Child Molestation Law*, 101 CALIF. L. REV. 609, 619-20, 632-34, 638 (2013) (examining how gender profiling in molestation cases creates disincentives for men to participate in the care of young children); Solangel Maldonado, *Beyond Economic Fatherhood: Encouraging Divorced Fathers to Parent*, 153 U. PA. L. REV. 921, 983-1008 (2005) (proposing ways that custody laws can better encourage fathers to engage in day-to-day caregiving).

145. See *infra* Part V.

146. See MAXINE EICHNER, *THE SUPPORTIVE STATE: FAMILIES, GOVERNMENT, AND AMERICA’S POLITICAL IDEALS* 17-19, 51-54, 112-14 (2010).

147. See *infra* Part V.A–C.

148. See *infra* Part V.A–C.

the Occupational Safety and Health Administration has promulgated regulations that require employers to provide restroom access that meet minimum sanitation standards.¹⁴⁹ Meanwhile, pursuant to Title III of the Americans with Disabilities Act, the U.S. Department of Justice has set accessibility standards for public restrooms.¹⁵⁰ Sixteen states have also passed laws that require businesses to open their restrooms to patrons with legitimate medical needs.¹⁵¹ In a similar vein to these existing regulations, the government should set standards for men's access to diaper changing tables.

The federal government very recently enacted the Bathrooms Accessible in Every Situation ("BABIES") Act, which requires federal government buildings to provide diaper changing facilities in both men's and women's restrooms.¹⁵² This is an important piece of public policy, but it only covers a very limited scope of buildings.¹⁵³ Some municipal governments have gone further by requiring new and renovated public accommodations to provide men and women equal access to diaper changing facilities, either by placing diaper changing tables in both men's and women's restrooms or by placing changing tables in family restrooms.¹⁵⁴ These ordinances cover not only government buildings but also other public accommodations, such as restaurants and retail stores.¹⁵⁵ Most recently, Honolulu joined cities such as Miami and San

149. 29 C.F.R. § 1910.141(c)–(d) (2015).

150. 28 C.F.R. § 35.151 (2015); 36 C.F.R. § 1191.1 (2015).

151. These laws are typically referred to as "Restroom Access Acts" or "Ally's Laws." See Rachel Nall, *The Restroom Access Act: A Major Victory for People with Crohn's*, HEALTHLINE (Jan. 14, 2016), <http://www.healthline.com/health/crohns-disease/restroom-legislation> (listing the following states as having restroom access legislation in effect: Colorado, Connecticut, Delaware, Illinois, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Ohio, Oregon, Tennessee, Texas, Washington, and Wisconsin).

As I was writing this Article, North Carolina passed a controversial law further illustrating that restrooms are a regulated space. 2016 N.C. Sess. Laws 3. The law, commonly referred to as House Bill 2, restricts transgender individuals' ability to use restrooms that correspond with their gender identity. The law is now being challenged as a violation of federal civil rights laws and the U.S. Constitution. See *Carcaño v. McCrory*, 315 F.R.D. 176, 177-78 (M.D.N.C. 2016); see also Alan Blinder et al., *North Carolina and U.S. Duel on Access Law*, N.Y. TIMES, May 10, 2016, at A1.

152. Bathrooms Accessible in Every Situation (BABIES) Act, Pub. L. No: 114-235, 130 Stat. 964 (2016); see Hailey Middlebrook, *Dad-in-Chief Signs Law Bringing Diaper-Changing Stations to More Men's Rooms*, CNN (Oct. 12, 2016, 2:35 PM), <http://www.cnn.com/2016/10/12/health/diaper-changing-tables-bathrooms-babies-act>.

153. See BABIES Act § 2(c)(2) (stating that the bill only covers federal buildings managed by the Public Building Service of the General Services Administration).

154. See S.F., CAL., PLANNING CODE art. 1, div. 5, § 168 (2015); MIAMI-DADE COUNTY, FLA., CODE OF ORDINANCES § 8A-114 (1998).

155. See *supra* note 154 and accompanying text.

Francisco, which already had local regulations in place.¹⁵⁶ New York has recently considered bills that would require public accommodations to grant men and women equal access to diaper changing tables.¹⁵⁷ These bills would make New York the first state to enact a law on this issue.¹⁵⁸ In 2014, California's legislature passed two bills to protect men's access to changing tables, but Governor Brown vetoed both measures, which I believe was an error in judgment.¹⁵⁹

Legal commentators should support existing initiatives to provide equal access to diaper changing facilities. Moreover, commentators should think creatively about other points of intervention. In my view, any time policymakers discuss how physical infrastructures can be made more family-friendly, the issue of paternal caregiving ought to be part of those conversations. It is a topic that is often omitted, and we should prevent this from being the case. For example, in the House of Representatives, Tammy Duckworth from Illinois introduced a bill titled the Friendly Airports for Mothers Act of 2015.¹⁶⁰ The bill would require medium and large airports to designate lactation rooms for mothers to breastfeed or pump breast milk.¹⁶¹ In the bill's spirit of supporting traveling parents, however, we should think more broadly about how airports should better accommodate parents—both mothers *and fathers*. Any future bills aimed at making airports family-friendly should not only address lactation rooms but also ensure that moms and dads have equal and sufficient access to diaper changing tables. Unfortunately, the recently passed BABIES Act does not cover airports.¹⁶²

156. See Gordon Y.K. Pang, *Bill on Diaper-Changing Stations Approved*, HONOLULU STAR-ADVERTISER (Aug. 6, 2015), <http://www.staradvertiser.com/2015/08/06/hawaii-news/bill-on-diaper-changing-stations-approved-2/>; see also S.F., CAL., PLANNING CODE art. 1, div. 5, § 168; MIAMI-DADE COUNTY, FLA., CODE OF ORDINANCES § 8A-114.

157. S. 4805, 2015-2016 Reg. Sess. (N.Y. 2015); S. 5473, 2015-2016 Reg. Sess. (N.Y. 2015).

158. See A. Pawlowski, *Potty Parity: Dads Fight for Diaper-Changing Tables in Men's Rooms*, TODAY (June 12, 2014, 6:16 AM), <http://www.today.com/parents/potty-parity-dads-fight-diaper-changing-tables-mens-rooms-2D79759305>.

159. According to Governor Brown: "At a time when so many have raised concerns about the number of regulations in California, I believe it would be more prudent to leave the matter of diaper-changing stations to the private sector." See John Wildermuth, *Brown Says State Shouldn't Legislate Diaper-Changing Stations*, S.F. CHRON. (Sept. 22, 2014), <http://www.sfchronicle.com/news/article/Brown-says-state-shouldn-t-legislate-5772377.php>.

160. Friendly Airports for Mothers Act of 2015, H.R. 2530, 114th Cong. (2015).

161. *Id.*; see Tammy Duckworth, *Airports Fail to Accommodate Breastfeeding Mothers*, CHI. SUN-TIMES (May 8, 2015, 3:17 PM), <http://chicago.suntimes.com/opinion/airports-fail-to-accommodate-breastfeeding-mothers>.

162. The BABIES Act only covers buildings that are controlled by the Public Building Service of the General Services Administration. See Bathrooms Accessible in Every Situation (BABIES) Act, Pub. L. No. 114-235, § 2(c)(2), 130 Stat. 964, 964-95 (2016). Airports typically are not controlled by the Public Building Service of the General Services Administration. The General Services Administration's properties are usually limited to office buildings, land ports of entries,

I know from personal experience that it is difficult for men and women alike to change diapers at my local airport. The Raleigh-Durham International Airport does not have changing tables in either men's or women's restrooms. The only changing tables are located in family restrooms, of which the airport has too few. I have been similarly frustrated on recent trips to New York. At LaGuardia Airport, I have resorted to changing my daughter's diaper on the floor behind a ticket counter because the only changing table available was in the women's restroom.¹⁶³ In my capacity as both a parent and a legal scholar, I hope to expand the conversation about airport regulations, so that the topic of equal and sufficient access to diaper changing facilities will be addressed. We should be supporting legislation on changing table access of women *and men* not only because protecting access is important in and of itself but because the issue of changing tables can be a helpful launching pad for conversations that raise public consciousness about paternal caregiving.

To be clear, this Article does not comprehensively canvas the ways that the government could regulate physical infrastructure to better support paternal caregiving. New York's bill on changing tables and federal regulation of airports are only two potential public policy interventions.¹⁶⁴ My goal here is to highlight the ability of the state to influence culture by regulating physical spaces—spaces that have long been subject to government oversight. In doing so, I encourage other commentators to direct more attention to this area of public policy reform.

B. Community Events Programming

Community events are another component of our cultural environment, and ubiquitous Mommy and Me classes are a prime example. While some private companies offer these classes, many—if not most—classes are offered by government-funded hospitals, libraries,

court houses, laboratories, and data processing centers. For more information about the General Services Administration properties, see *GSA Properties*, GSA, <http://www.gsa.gov/portal/content/104501> (last visited Nov. 26, 2016).

163. I previously wrote about this incident at Holning Lau, *Dads Change Diapers Too*, CONCURRING OPINIONS (June 26, 2016), <https://concurringopinions.com/archives/2016/06/dads-change-diapers-too.html>. After I complained to the Port Authority of New York and New Jersey, which manages LaGuardia Airport, they informed me that their operations team would consider installing changing tables in all men's restrooms. See Letter from Edward Gantenhammer, Manager Customer Serv., LaGuardia Gateway Partners LLC, to author (July 8, 2016) (on file with author).

164. H.R. 2530; S. 4805, 2015-2016 Reg. Sess. (N.Y. 2015); S. 5473, 2015-2016 Reg. Sess. (N.Y. 2015).

and community colleges.¹⁶⁵ Government-funded institutions have long been subject to state regulation.¹⁶⁶ As such, the state can use regulatory tools at its disposal to make so-called Mommy and Me classes more inclusive. Specifically, the state should condition its funding on the reframing of Mommy and Me classes, so that fathers are encouraged to participate in them as well. The classes should be given a gender-neutral name, such as “Baby and Me.”¹⁶⁷ Additionally, class descriptions should explicitly encourage not just moms but also dads and other caregivers to participate.

To be clear, these classes are not biological in nature. They are not breastfeeding classes. For example, Huntington Hospital in Pasadena—a relatively progressive part of the country—offers a “Mommy and Me” class that it describes as “song time, parachute play, and bubbles with baby.”¹⁶⁸ All of these activities could surely involve fathers. It is worth noting that some hospitals, libraries, and schools have already become more inclusive of fathers. Yet, their efforts can leave a lot to be desired. In Rockville, Maryland, for example, the public library calls their classes Mommy and Me, and then in parentheses are the words “& Daddy Too!”¹⁶⁹ Relegating dads to the parenthetical sends the message that fathers are just an afterthought. Other libraries have “Daddy and Me” classes that are separate from “Mommy and Me” classes. However, the mommy classes far outnumber the daddy classes.¹⁷⁰ Moreover, while the mommy classes are scheduled for weekdays during the day, the occasional daddy classes are scheduled on weekends or evenings, reinforcing the expectation that fathers devote themselves, first and foremost, to performing the role of breadwinner.¹⁷¹

165. See, e.g., *Events at Rockville Memorial Library*, ROCKVILLE MEMORIAL LIBR., <http://www.montgomerycountymd.gov/library/branches/rockville.html> (last visited Nov. 26, 2016); *Storytimes & Programs*, PARK CITY LIBR., <http://parkcitylibrary.org/kids/storytimes-programs> (last visited Nov. 26, 2016); *Women's Services: Mommy and Me*, HUNTINGTON HOSP., <http://www.huntingtonhospital.com/Main/MommyMe.aspx> (last visited Nov. 26, 2016).

166. See *infra* text accompanying notes 172–80.

167. For an example of a library that has already adopted the Baby and Me title, see *Storytimes & Programs*, *supra* note 165, which describes Baby and Me as a program involving “short books, music, and more!”

168. *Id.*

169. *Events at Rockville Memorial Library*, *supra* note 165.

170. In the popular blog “Mommyish,” Rebecca Eckler lamented that Mommy and Me classes far outnumber Daddy and Me classes. See Rebecca Eckler, *I Can't Wait to See How Many Mommyish Show Up to 'Daddy and Me' Classes*, MOMMYISH (Apr. 29, 2014), <http://www.mommyish.com/2014/04/29/daddy-and-me-classes/#ixzz43BNofSpg>. She expresses frustration over the disparate parenting expectations that this division perpetuates. See *id.*

171. For example, I recently came across a newsletter from the Farmington Library in Connecticut. The “Me and My Baby” classes were described as “especially for moms” and scheduled for Friday mornings; meanwhile, “Daddy and Me” classes were scheduled for Saturdays.

The government could encourage the reframing of Mommy and Me classes through either legislation or administrative regulations concerning funding for hospitals, libraries, and schools. It would not be the first time that the government has used funding conditions to strengthen families. For example, to support same-sex domestic partnerships, the Obama administration required all hospitals that receive Medicare or Medicaid funds to recognize same-sex domestic partnerships for hospital visitation rights.¹⁷² President Obama first issued an advisory memo on this matter.¹⁷³ Pursuant to that memo, the Center for Medicare and Medicaid Services promulgated a rule giving patients the right to choose who may visit them during hospital stays, which could include a same-sex domestic partner.¹⁷⁴ The agency also requires hospitals to provide “full and equal” privileges for all visitors chosen by the patient, to have written policies detailing visitation rights, and to inform patients of such rights.¹⁷⁵ A hospital’s failure to comply with these rules could result in a withholding of federal funds.¹⁷⁶ Following procedures similar to those that the Obama administration used to protect same-sex couples, the government could require hospitals to ensure that parent-child classes be given gender-neutral titles such as “Baby and Me.”¹⁷⁷ The government could also require hospitals to emphasize in marketing materials that both mothers and fathers are encouraged to participate in the classes.

The government could similarly use its funding powers to encourage the reframing of Mommy and Me classes at public libraries. It is worth noting that libraries operate under the influence of the American Library Association (“ALA”), which is a non-governmental entity with

Children’s Fall Programs 2015 @ the Farmington Libraries, FARMINGTON LIBR., <http://farmingtonlibraries.org/wp-content/uploads/2015/08/kids2015fallnewsletter.pdf> (last visited Nov. 26, 2016).

172. Memorandum on Respecting the Rights of Hospital Patients to Receive Visitors and to Designate Surrogate Decision Makers for Medical Emergencies, 2010 DAILY COMP. PRES. DOC. 1-2 (Apr. 15, 2010).

173. *Id.* at 2.

174. Medicare and Medicaid Programs: Changes to the Hospital and Critical Access Hospital Conditions of Participation to Ensure Visitation Rights for All Patients, 75 Fed. Reg. 70,831, 70,832-33 (Nov. 19, 2010) (to be codified at 42 C.F.R. pt. 482).

175. *Id.*

176. *Id.* at 70,840.

177. For information on the Obama administration’s work related to sexual orientation rights, see *Obama Administration Policy Advancements on Behalf of LGBTQ Americans*, HUM. RTS. CAMPAIGN, <http://www.hrc.org/resources/obama-administration-policy-legislative-and-other-advancements-on-behalf-of> (last visited Nov. 26, 2016).

considerable power to shape library norms.¹⁷⁸ In this light, the ALA could prove to be more powerful than the government in encouraging libraries to reframe their Mommy and Me programs. Still, the government could wield its power as well. Congress appropriates annual library funds through the Museum and Library Services Act.¹⁷⁹ A federal agency called the Institute of Museum and Library Services (“IMLS”) then distributes the funds through its Grants to States program.¹⁸⁰ In my view, the IMLS should stipulate that it will review grant applications based, in part, on grant-seeking states’ commitments to ensuring that library classes for parents are inclusive of fathers. This would comport with the fact that the IMLS recently identified “human services,” including parenting services, as one of six focal areas for measuring the success of its Grants to States program.¹⁸¹

Having one hospital or library reframe its Mommy and Me classes would be a small instance of progress. However, if the government were to facilitate a large-scale movement that reframes Mommy and Me classes currently hosted by state-funded institutions, it would jumpstart a broad cultural shift. I suspect that the reframing among government institutions would have spillover effects, prompting a reframing of Mommy and Me classes offered by private businesses as well.

C. Media Campaigns

Finally, the government can work to reshape our cultural environment through media campaigns that shine a light on fathers as caregivers. A good place to start would be to revamp the federal government’s Fatherhood Initiative, which has operated over the last three presidential administrations.¹⁸² Under the Obama administration, the Fatherhood Initiative has run a public education campaign aimed at increasing fathers’ engagement with children.¹⁸³ Unfortunately, because

178. *About ALA*, AM. LIBR. ASS’N, <http://www.ala.org/aboutala> (last visited Nov. 26, 2016).

179. Museum and Library Services Act, 20 U.S.C. § 9108(f) (2012).

180. *Grants to States*, INST. MUSEUM & LIBR. SERVICES, <https://www.imls.gov/grants/grants-states> (last visited Nov. 26, 2016).

181. See *Cross-Walk of Services/Activities with Focal Areas*, INST. MUSEUM & LIBR. SERVICES, <https://www.imls.gov/research-evaluation/program-evaluation/grants-state-library-agency/measuring-success-initiative> (last visited Nov. 26, 2016).

182. For information on the history of the federal government’s Fatherhood Initiative, see Jessica Dixon Weaver, *The First Father: Perspectives on the President’s Fatherhood Initiative*, 50 FAM. CT. REV. 297, 298-300 (2012).

183. WHITE HOUSE, PROMOTING RESPONSIBLE FATHERHOOD 2-4, 6 (2012), https://www.whitehouse.gov/sites/default/files/docs/fatherhood_report_6.13.12_final.pdf. The full name of the government’s program is the “Fatherhood and Mentoring Initiative.” *Id.* at 3. For brevity, this Article uses the shorthand “Fatherhood Initiative,” which other commentators have used previously.

the Fatherhood Initiative has focused on preventing absenteeism among fathers, it has set very low standards for paternal engagement.¹⁸⁴ The Fatherhood Initiative's media campaign equates engaged fatherhood with men who focus primarily on breadwinning but still make time to play with their children.¹⁸⁵ While this archetypal father in the media campaign may be preferable to a father who is completely absent, this archetype reproduces cultural assumptions that caregiving should be left to women.

Videos distributed by the Fatherhood Initiative reproduce the cultural expectation that fathers work outside the home, but should find time to interact with their children; regrettably, the interactions portrayed in the videos are quite minimal.¹⁸⁶ For example, one clip features three television personalities from the Major League Baseball ("MLB") Network.¹⁸⁷ The video shows the men in their offices, taking a moment out of the day to call their children by phone or videoconference to say hello.¹⁸⁸ The clip closes with one of the men telling viewers: "Remember, you're never too far away from your kids to be a dad. Reach out and take a second to check in—because sometimes, the smallest moments can have the biggest impact on a child's life."¹⁸⁹ A second video shows the excitement of children greeting their fathers when they get home.¹⁹⁰ The narrator in the clip reminds viewers that "the smallest moments can have the biggest impact on a child's life."¹⁹¹ Other videos depict fathers playing with their children while a narrator preaches, "[t]ake time to be a dad today."¹⁹² Collectively, these videos

184. See Weaver, *supra* 182, at 300-02 (describing how concerns about absentee fathers animate public policies such as the Fatherhood Initiative).

185. For access to media content from the Fatherhood Initiative, see *Multimedia*, NAT'L RESPONSIBLE FATHERHOOD CLEARINGHOUSE, <https://www.fatherhood.gov/multimedia> (last visited Nov. 26, 2016).

186. See *Video*, NAT'L RESPONSIBLE FATHERHOOD CLEARINGHOUSE, <https://www.fatherhood.gov/multimedia/video> (last visited Nov. 26, 2016).

187. *How to Be a Major League Dad*, NAT'L RESPONSIBLE FATHERHOOD CLEARINGHOUSE, <https://www.fatherhood.gov/multimedia/how-be-major-league-dad> (last visited Nov. 26, 2016).

188. *Id.*

189. *Id.*

190. *Anticipation (30 Seconds)*, NAT'L RESPONSIBLE FATHERHOOD CLEARINGHOUSE, <https://www.fatherhood.gov/multimedia/anticipation-30-seconds> (last visited Nov. 26, 2016).

191. *Id.*

192. See *NRFC and Today Takes Action Father Involvement PSA Transcript*, NAT'L RESPONSIBLE FATHERHOOD CLEARINGHOUSE, https://www.fatherhood.gov/sites/default/files/webinar/transcript/NRFC_Today_PSA_30s.pdf (last visited Nov. 26, 2016); *NRFC PSA Transcript: Kid Again—30 Seconds*, NAT'L RESPONSIBLE FATHERHOOD CLEARINGHOUSE, https://www.fatherhood.gov/sites/default/files/webinar/transcript/guys_night_out_script_6.2014_508c.pdf (last visited Nov. 26, 2016); see also *WWE Guys' Night Out Radio Transcript*, NAT'L RESPONSIBLE FATHERHOOD CLEARINGHOUSE, https://www.fatherhood.gov/sites/default/files/webinar/transcript/guys_night_out_script_6.2014_508c.pdf (last visited Nov. 26, 2016); *WWE Tea*

send the message that being an engaged dad means finding some time outside one's work schedule to play.

Interestingly, the Obama administration's Fatherhood Initiative has stated that it aims to promote "responsible fatherhood," which it defines as "taking responsibility for a child's intellectual, emotional, and financial well-being[,] . . . actively contributing to a child's healthy development, sharing economic responsibilities, and cooperating with a child's mother in addressing the full range of a child's and family's needs."¹⁹³ Yet, media content produced by the Fatherhood Initiative falls far short of promoting this model of fatherhood that includes caregiving.¹⁹⁴ Instead, the Fatherhood Initiative has set very low caregiving expectations for fathers by centering their media depictions of fatherhood on breadwinning and play.

To foster a cultural environment that supports fathers as caregivers, the Fatherhood Initiative should replace its videos with new media that showcases multiple sides of fatherhood, including caregiving. The government could learn from the Dove Men+Care 2015 Super Bowl advertisement, which challenged gender scripts by featuring fathers who not only played with children but also performed caregiving tasks traditionally associated with women.¹⁹⁵ The video portrayed fatherhood to include experiences such as soothing a crying child, doing a daughter's hair, coming to the rescue of a child learning to dress himself, assisting a child on the toilet, and sitting at mealtime with a child in his high chair. All these tender moments are celebrated by the video, which concludes by asking: "What makes a man stronger? Showing that he cares."¹⁹⁶ Unfortunately, the Dove Men+Care commercial is an exception to the norm. As discussed earlier, private sector marketing campaigns often reinforce conventional gender roles in parenting. The government should consider partnering with companies like Dove Men+Care to produce and widely distribute media portrayals of fathers

Pot Father Involvement Radio Transcript, NAT'L RESPONSIBLE FATHERHOOD CLEARINGHOUSE, https://www.fatherhood.gov/sites/default/files/webinar/transcript/tea_pot_script_6.2014_508c.pdf (last visited Nov. 26, 2016).

193. WHITE HOUSE, *supra* note 183, at 2-3.

194. See *supra* text accompanying notes 187-91.

195. Abantec Official Commercials, *Dove Men Care Super Bowl 2015 Commercial Super Bowl XLIX Preview Real Strength—Trailer HD*, YOUTUBE (Mar. 17, 2015), <https://www.youtube.com/watch?v=O9XR0VepAgw>.

196. *Id.*

as caregivers.¹⁹⁷ Such efforts can serve as an antidote to other companies' marketing materials that equate caregiving with women.

To be sure, this Article just scratches the surface on ways the government can use media to shift cultural expectations about paternal caregiving. Beyond retooling the Fatherhood Initiative and partnering with companies such as Dove Men+Care, the government can explore other options such as strategically distributing grants via the Corporation for Public Broadcasting ("CPB") to encourage the creation of public television and radio programming that spotlights paternal caregiving.¹⁹⁸ It is beyond the scope of this Article to fully explore such options; however, I mention these options to further illustrate that when we set our sights beyond reforming parental employment leave, we can see many additional areas of public policy reform that warrant consideration. It is worth noting that, of course, lobbying the private sector is an important way to influence media depictions of fathers. Such campaigns have already attained some success, as illustrated by our earlier discussion of Amazon, Huggies, and Clorox.¹⁹⁹ While we press the private sector to reform, however, the government should also adjust its media programs to include better representations of fathers as caregivers.

VI. CONCLUSION

The government has the power to shape a wide range of elements in our cultural environment.²⁰⁰ To foster a culture that is more supportive

197. There are certainly policy precedents for public-private partnerships in education campaigns. A recent example of government collaboration with large private corporations is the Obama administration's "It's On Us" initiative. In this campaign, the government partnered with companies including MTV, BET, and the videogame maker EA Sports to produce and distribute media aimed at preventing sexual assault. Looking more broadly, we also know that the federal government has given grants to corporations to pursue projects ranging from building green buildings to developing diversity training programs for employees. The government could create similar financial rewards for companies that incorporate inclusiveness of fathers in marketing campaigns. None of the programs mentioned in this footnote are perfect models, but they do suggest that the state can engage the private sector in creative ways to advance specific social values. To the extent that a public-private education campaign will require state funds, the state should consider diverting money from the federal government's Healthy Marriages Initiative, which has been subject to extensive criticisms. For critiques of the Healthy Marriages Initiative, see Vivian Hamilton, *Will Marriage Promotion Work?*, 11 J. GENDER RACE & JUST. 1, 4-6, 12-15 (2007) and Holning Lau, *Beyond Our Hearts: The Ecology of Couple Relationships*, 4 CALIF. L. REV. CIR. 155, 161-63 (2013).

198. The federal government formed the CPB through the Public Broadcasting Act of 1967. 47 U.S.C. § 396(b) (2012). CPB distributes federal grants to support the development of diverse public broadcasting content. See *About CPB*, CORP. FOR PUB. BROADCASTING, <http://www.cpb.org/aboutcpb> (last visited Nov. 26, 2016).

199. See *supra* text accompanying notes 43-49.

200. See *supra* Part V.

of paternal caregiving, it is not enough to address workplace paternity leave. Instead, the government should account for the broader cultural ecology that surrounds the workplace.²⁰¹ This Article has explored ways that the government can influence physical manifestations of culture, such as the availability of diaper changing stations, as well as culture's social manifestations, such as the framing of state-sponsored parenting programs and the depiction of fathers in media.²⁰² Taking an ecological approach to reform is the best way to support fathers who are primary or co-equal caregivers.²⁰³ Cultivating support for dads as caregivers is good for men, good for women, and good for the children we love so much.

201. *See supra* Part IV.B.

202. *See supra* Part V.A–C.

203. *See supra* Part V.
