

Fathers: The War Against Error

The Family Court's perception of fathers has changed over the years, but the law in this area is less a reflection of the times and more a reflection of the judiciary's inability to keep up with it. Fathers are getting a raw deal and they are dangling from sky scrapers dressed in batman suits to prove it.

At the dawn of the twentieth century, fathers were the head of the family and wives and children merely possessions. Fathers had exclusive parental responsibility over children and mothers had no legal rights in relation to custody or care. With more than a hint of arrogance, the courts also took the view that children borne out of wedlock were inferior to their 'legitimate' counterparts and it is fascinating to note that as a result those illegitimate children were automatically entrusted by law to their mothers.

Today, the law is still divided: married fathers and unmarried fathers are considered to be in two different legal 'classes' and once again, the law has let us down by failing to acknowledge parenthood as a dignified and independent position, with or without the contractual element of marriage. Of course, when a father is divorced, he then finds himself in exactly the same position, practically speaking, as the unmarried father: the irony of this is surely not lost on anyone.

A father's position is a precarious one: if he has married the mother of his child, he is automatically granted parental responsibility. Under the Children Act 1989, this means "all the rights, duties and responsibilities which by law a parent of a child has in relation to the child and his property" *. Quite what those rights and duties are, are very much the subject of heated debate within the Family Courts today and the family unit itself but the struggle to avoid such crude labelling in our laws is first and foremost faltering with the legal perception of the father figure. It stands to reason that just because a man has married the mother of his child that we cannot possibly be expected to believe that such men are superior to their unmarried counterparts (even if there is a marginal argument for bravery when any man agrees to live with the same woman till death do they part).

By way of contrast, unmarried fathers split into two further categories thanks to some minor concessions made with the advent of new legislation (Adoption and Children Act 2002, which amends the Children Act 1989), which in fact only serve to denigrate unmarried fathers further. Unmarried fathers who have registered their names on their children's birth certificates with the mother and whose children were born after 1st December 2003 now acquire parental responsibility by having their names added to such certificates. Other ways of getting parental responsibility are: acquiring a residence order, parental responsibility order or making a parental responsibility agreement with the mother or you can marry the child's mother (an option that probably won't be one of the more popular choices.....)

Oddly enough, unmarried fathers whose children were born before 1st December 2003 and who have also registered their names on the birth certificate, do not then acquire parental responsibility as of right.

The significance of this distinction lies in the fact that there is a further bias against unmarried fathers whose children were born before December 2003. There can be no logical or rational basis for such a distinction when taking into account the law's need to remain

neutral in the first instance and pro-active not retro-active in its application of the parental principle which must be, as a starting point, to recognise and value every member of the immediate family unit.

How can the law deny fatherhood on the basis that there is no contract entered into between the mother and the father? It remains the case that many couples have children and never marry but the causes vary ; whether the couple fall out of love or one party rejects their role as parent, it is perhaps prejudicial to say the least, to make the implicit first assumption that fault lies with the father. In a world where both men and women can make choices, to allow the law to create an immediate bias is to allow for errors of the worst kind. After all, a father is for life, not just for assembling dodgy Ikea wardrobes....

There is though a more powerful force at work than that of legal justice and that is the notion of natural justice; the recognition that the love of a parent for a child can never really be manipulated or stifled which can provide comfort to fathers who have been denied the right to see their children on the basis that they have no parental responsibility. Nevertheless, this sentiment has been expressed in Court to appease aggrieved fathers, wracked with the pain of negligible to no contact for no other reason than that their status has been denied and here the Family Courts have neglected their duty to protect a child's right to family life.

As with many cases, there may be reasonable reasons for why one parent should not have parental responsibility but the Court should not be so quick, in any instance, to allow lopsided legislation to make the initial judgement call. It is also not enough that the Family Courts fall back on the notion of natural justice where fathers have been denied contact purely on a legislative technicality. The law needs to change to reflect the reality, which embodies not only the understanding that caring fathers are an asset to the family unit but that all parties to the family unit must be viewed as beneficial to one another, in the first instance.

Parental responsibility in pragmatic terms, allows the parent the ability to 'parent', to make decisions with their child's best interests in mind and to be able to play a seminal role in their upbringing. Although the role of father and mother continues to be redefined by social conditions and economic climates, the basic principles will always remain the same; children benefit from loving adults in their environment and a loving father is no exception, regardless of whether he embarrasses his children with his renditions of his childhood tomfoolery or his beer cap collection. It has often been stated in the past that at the heart of these irrational legal deductions lies a resistance to equality but perhaps there is something more pressing today than the pursuit of equality; the pursuit of humanity.

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