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Mother: The Legal Domestication of Lesbian Existence

RUTHANN ROBSON

The legal category "mother" operates restrictively and punitively to "domesticate" lesbian existence. Our domestication is the reason that we have difficulty thinking beyond the category "mother." I explore how "mother" is used by both lesbians and nonlesbians within the legal system. In order to ensure lesbian survival on lesbian terms, we must strategize theories that do not preserve the dominant legal paradigm that codifies "mother," even if that category is expanded to include "lesbian mother."

"Mother" is a legal category. Like all legal categories, it has the potential to domesticate lesbian existence and thus interfere with lesbian survival. By lesbian survival, I mean two things. First, I mean a daily individual survival that depends on food, shelter, and love—including, for some of us, love relationships with children. Second, I mean an individual and collective survival that depends on some sort of identity as lesbians.

The law can interfere with both the tangible and intangible types of survival in many ways, one of which is a process I call domestication. Domestication is similar to other political processes that have been named colonization and imperialism. Yet both imperialism and colonization describe concrete historical processes that have resulted in slavery, death, and destruction,[1] and I have come to prefer the term "domestication" to connote the law's hegemony over lesbian survival. Domestication is connotatively gendered. It connotes the relegation of women to the domestic sphere, a private place that can facilitate being dominated and inhibit collective action. It also connotes the circumscribing of one's potential to the service of another, as when animals are domesticated for human use.

Domestication also describes a process of substituting one way of thinking for another. Domestication has occurred when the views of the dominant culture, in this case the legal culture, are so internalized they are considered common sense. The barbed-wire enclosures seem to exist for our protection

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rather than restriction.[2] We attempt to argue ourselves into legal categories so that we can be protected, not noticing how such categories restrict our lesbianism.

The category of mother is such a legal category. While mother is certainly a category in the nonlegal world, a category with biological, affectional, cultural, and religious implications, its legality is pervasive. One example is especially telling. At the National Lesbian Conference in Atlanta last year, I participated in a workshop discussing lesbian parenting. During a small-group discussion, lesbians—ever practical—began talking about what our children should call us. The lesbians in the group did not know each other. No one knew I was an attorney, and I was not thinking about the law. My suggestion was that a child call both mothers simply by their first names. This suggestion was vigorously objected to by another lesbian, who said, "The law gives me twenty-four-hour-a-day responsibility for that child. Me—and me only, not my lover and not anyone else. I deserve to be called something special; something that no one else calls me; something like mother." What surprised me was not this lesbian's disagreement with my particular proposal but her appeal to the law. Where I expected the birth pangs of biology, I got the legal rule of parental responsibility. The other members of the small group took up her point, not only agreeing with the special nature of the word "mother" but also appealing to its legal force.

When we talk about the legal rules as the basis for lesbian choices, I believe we are domesticated. At stake is not whether the children who live with us call us "Alice" or "Mama Alice" or "Mom"—the range of choices is as wide as the range of lesbians. However, what is at stake is our process. We can appeal to equality models in which no mother would be "other," antihierarchical models in which children are not deferential to adults, historical models in which children are property, and even personal models based on our own childhoods. Or we can simply like the way something sounds. But when the reasoning for our lesbian decisions is predicated on an uncritical adoption of the rule of law, I believe this is problematic. It marks lesbian domestication by law.

In seeking to move beyond our domestication by the rule of law, a specifically lesbian legal theory is important. The first step in this lesbian legal theory is to examine critically the rules of law and legal categories and assess them in regard to lesbian survival. Thus, I seek to center lesbian concerns rather than legal ones and to examine the ways in which the rule of law employs the legal category of mother with reference to lesbians.

Legal decisions have real effects. The extent to which a lesbian is a legally recognized mother is the extent to which a lesbian's relationship with a child might be protected. Yet even if this relationship is legally defined as mother-child, this does not guarantee absolute protection. The law may determine that a particular lesbian is not within the category of mother as the law defines it.

In such a case, the law denies the lesbian custody or visitation and places the child with another person or with the state. In this essay, I explore the state of the rule of law with regard to lesbian motherhood and examine particular cases in which the rules of law domesticate individual lesbians. However, I also make the claim that the very category of mother domesticates our own thinking about our relationships with children.

Lesbian motherhood has received much attention, including attention to its legal ramifications.[3] However, much of the law-related attention has focused on manipulation of the rules of law to achieve desired results and not on challenges to the underlying premises of law. Much of this attention has been by legal reformers and scholars who are responsible for many of the changes in the rule of law that benefit lesbians who seek to maintain relationships with children. It must be stressed at the outset, however, that any lesbian legal theory cannot assume that lesbian custody is the preferable outcome. As always, the emphasis must be on lesbian choice. By centering lesbians rather than law, a lesbian legal theory might be able to confront more directly the power of the rule of law to domesticate our lesbian lives.

I. LESBIAN MOTHERS AND NONLESBIAN CHALLENGES

Lesbians' relationships with children are subject to legal interference by two general categories of nonlesbians. (Disputes between lesbians are considered in the next section.) The first category is the other parent, the father. The mother-child-father relationship is a legal one. For lesbians who share parentage of a child with a man, regardless of whether they have been married or not, the law dictates that the man has parental rights. The rules of law determining men's parental rights have fluctuated throughout legal history. At one time the father had an absolute right to sole custody (of legitimate children), an obvious result given the man's ownership of both the wife and the children. The more recent American rules of law generally employed a maternal preference, especially if the child was of "tender years." This so-called tender-years doctrine gave the mother a presumption of custody, unless the father could prove the mother was unfit. Under this standard, many lesbians could be proven unfit. However, the tender-years doctrine did not change because of lesbian legal reform but because of the relatively recent feminist legal reform that led to the establishment of gender-neutral laws. Thus, the present rule of law in all states provides that in any custody litigation between the mother and father, the court must determine the "best interests of the child." This gender-neutral rule supposedly allows the parents to start off in equal positions. The court then applies numerous factors depending on the particular state statute or case law in order to weigh the relative merits of the parents. Factors considered include economic, educational, social, and cultural ones; and given women's disadvantage in these areas relative to men, it should not be surprising

that current statistics reveal that fathers who litigate for custody have substantial chance of prevailing. Not surprisingly, the best-interests-of-the-child test is often applied as if it is the best-interests-of-the-state test, especially when judges disclose reasons such as it is in the best interests of a child to grow up in a conventional state-approved family.

When lesbianism is raised in a case between a mother and a father, whether it is in an original custody case or in a suit seeking a change of custody because of the discovery of the mother's lesbianism, courts employ three different approaches. The first and most limiting approach is that living with a lesbian mother cannot be in the best interests of the child. The second or middle-ground approach is that living with a (lesbian) mother can be in the best interests of a child as long as the mother is a mother and not a lesbian who flaunts her lesbianism, lives with a lesbian lover, or engages in lesbian politics. The third and presumably most enlightened approach is the nexus approach. Courts use what they call the nexus test to determine whether the mother's lesbianism actually harms the child. The application of this harm principle in practice often makes the nexus test indistinguishable from the first, per se approach or the middle-ground, mother-first/lesbian-last approach. The types of harm that courts often consider under this nexus test include the harm of molestation (although this is usually more likely in a gay father's case than a lesbian mother's case), the harm of a potential gay or lesbian identity in the child, the harm of stigmatization to the child because of having a lesbian mother, and the harm of living in an immoral and illegal environment.

For example, in a 1989 Missouri appellate court opinion, the court specifically adopted the requirement that there must be "a nexus between harm to the child and the parent's homosexuality" but considered evidence of harm that the

> mother admitted on cross-examination that she had slept with friend while the children were in the house. She was also unable to "say for certain" that she had not kissed friend on the lips or touched her affectionately in front of the children.

The court also noted that

> even if the mother remains discreet about her sexual preference, a number of experts at the trial testified and Missouri case law recognizes that a parent's homosexuality can never be kept secret enough to be a neutral factor in the development of a child's values and character.[4]

The appellate court affirmed the trial court's award of custody to the father and his new wife, despite the fact that each child told the trial judge that he or she wished to remain with the mother.

Not all courts have applied the nexus test, or even the middle-ground approach, as homophobically as the Missouri court. Many courts, including appellate courts in New Jersey, Alaska, Massachusetts, South Carolina, and New York have specifically found that a mother's lesbianism did not constitute a harm to the child.[5] However, underlying even these relatively liberal opinions filled with fact-specific reasoning is the assumption that having a lesbian mother could be harmful to a child and thus considered to be not in the best interest of the child, that future citizen of the state.

Lesbian relationships with children are also subject to legal interference by nonlesbians who are not parents to the child. These third parties can include nonparents, such as interested relatives, foster parents, or the state. In these cases, the third party must generally prove the mother unfit. The rule of law does not impose equality on the mother and the nonparent, and these third parties have a greater burden than simply proving that it would be in the best interests of the child to remove the child from the lesbian mother. Courts do not generally consider lesbianism alone proof of unfitness, but this does not mean courts do not consider it or even rely on it. For example, in a 1990 case the Supreme Court of Mississippi affirmed an award of custody to the paternal grandparents of the children of a lesbian mother, An(drea) White.[6] Mississippi's highest court noted that even though the trial court "may have relied almost exclusively" on the mother's lesbian relationship, there was enough evidence in the record—including some conflicting testimony about the children being outside in cold weather without adequate clothing—to support the trial court's removing the children from An White's custody as well as not allowing the children to visit with her in the presence of her lover. The mother in this case is not a middle-class model of respectability, but what is interesting is that she was not that model when she was married; in fact, her conditions had apparently improved since she separated from her husband and began living with her lover. No one claimed that the children's father should be awarded custody "given his financial situation and his drinking problem." Yet when An White became involved with a woman, her husband's parents decided that she should be denied custody. The courts of Mississippi agreed.

The per se rule of law that "lesbian" and "mother" are mutually exclusive legal categories is in disrepute. The enlightened view, subject to many permutations, is that lesbianism alone cannot satisfy the requirement of a mother being unfit should third parties attempt to gain custody, or even the requirement that custody be awarded to the parent who best comports with the best interests of the child should a father attempt to gain custody. This enlightened view has been forced on the courts by many brave lesbian mothers who engaged in painful litigation with the advocacy of many hardworking and clever lesbian legal workers. It is certainly an advancement.

Nevertheless, this enlightenment can be merely the patina of privilege. Like the specter of lesbian marriage, these liberal custody rules of law contribute to

a division between bad lesbians and good ones: good lesbians are white and from a professional class, monogamous and discreet, and self-sacrificing mothers. These exemplary lesbians "deserve" custody despite their lesbianism, assuming that their children are also "above-average." Two examples are illustrative. First, there is Jane Doe, so good that she keeps her real name out of the court records. Jane does not have sole custody of her son, the eleven-year-old "well-adjusted and above-average" Jack, but he visits her for eight weeks in the summer and on alternate Easter and Christmas vacations. Ann Smith Doe, the father's new wife, wants to adopt Jack and thus terminate Jane Doe's parental rights. A Virginia trial court agrees, terminates Jane's status as a mother, and allows the adoption. But when Jane appeals to the Supreme Court of Virginia, she prevails. The court's opinion sounds like she is winning the Miss Congeniality contest rather than a custody appeal:

> Although there was testimony that her relationship with the woman with whom she lives is unorthodox, the testimony is also that Jane Doe is an exceptionally well-educated, stable, responsible, and sensitive individual. Witnesses described Jane in various ways, but always in a highly complimentary manner. They referred to her as a conscientious and creative parent, friendly by nature, who instills in the boy a love for other people and for animals. It was testified that Jane's love for Jack was a nurturing love, and that she exercised a selfless wisdom in caring for him. Jane Doe has apparently earned the respect of her peers . . . because of her civic work and active interest in the community and her relationship with the people with whom she comes into contact.[7]

I do not mean to belittle Jane Doe or the accomplishment of her attorney for putting together such impressive evidence. But factors such as being well educated and engaging in civic work can be a bit daunting to someone like An White, who lived in a trailer and who had most recently worked at a convenience store. Also daunting, besides class considerations, are lesbian-identity considerations. As the Supreme Court of Virginia specifically noted, it was not "approving, condoning, or sanctioning" Jane's "unnatural lifestyle," which was proper for the court to consider but was found to be outweighed in her particular circumstances, a resolution that the court warned might be temporary:

> Further, in determining her fitness as a mother and the future welfare of her son, we are not unmindful of her testimony that should it become necessary, for her son's sake, she would sever the relationship with the woman with whom she now lives.

> There may come a time when the welfare and best interest of her son require that she honor this commitment.

For women who are not willing to separate from their lesbian lovers, courts are less lenient. They are especially prone to less leniency if the mother in question is less than congenial, a little too "dykey," and the child is less than perfect. In a Pennsylvania case, the mother appealed the state's taking away of her preschool son who had a speech problem. The appellate court upheld the removal, writing an opinion containing the following:

> Joey was exposed to a chaotic and harmful home life. The mother is a lesbian who effects a masculine appearance, wears men's clothing, and has a masculine oriented mental status. At the time of the hearing, she lived with Nancy M . . . and two of her children in a two bedroom apartment. . . .
>
> [The caseworker] also found the mother to be uncooperative. The mother took notes throughout her meetings with the caseworker and responded in an adversarial manner that her attorney, "knows about this."[8]

When the mother refused the condition that she not live with her lover, the court found that this "revealed forcefully her true feelings and attitudes regarding Joey's [speech] therapy." The appellate court disingenuously rejected the mother's claim that the court was unnecessarily interfering in her lesbian relationship absent a causal connection between the lesbianism and harm. The court noted that the order to exclude the lover from the home was not meant to interfere with the lesbian relationship but only to establish order and foster the close relationship between the mother and son.

When conflicts over a child arise between a lesbian and a heterosexual man or state agency, our lesbian loyalties are undivided. Any lesbian legal theory must center the lesbian and privilege her position to choose custody. In most cases, a lesbian in a custody dispute has not chosen to be within the rules of law. There must be legal reform to afford lesbians who find themselves within that legal system their choices. A liberal nexus test that states that harm must be proven or else lesbianism will not be considered is not liberal enough: "harm" must not include a child being exposed to lesbian expression or a child's potential lesbianism or gayness. Exclusion of a lesbian's lover from her home is asking a lesbian to choose between her lover and her child. This is not the type of lesbian choice that any lesbian legal theory would seek to promote.

Yet a lesbian legal theory must stress lesbian choice rather than lesbian custody. An assumption that custody is what should be chosen by any lesbian is detrimental. A lesbian legal theory puts lesbians at the center, even to the exclusion of the children of lesbians. It is difficult to disagree with the legal

standard of "best interests of the child," but a lesbian legal theory has a different focus. Its central focus is lesbian.

II. LESBIAN MOTHERS AND GAY/LESBIAN COPARENTS

When conflicts over a child within our communities arise, our lesbian loyalties can be divided: when two lesbians who are raising a child together separate, centering lesbians does not necessarily solve the problem. However, before considering this scenario, I think it should be distinguished from another scenario, one in which lesbian loyalties can be falsely divided and centering lesbians does reorient our perspectives. The scenario involves the gay sperm donor.

Under the rule of law, contribution of sperm is an entitlement to the benefits and burdens of fatherhood. Many states do have statutes that alleviate this rule somewhat, but importantly these statutes protect the rights of infertile fathers by severing the sperm donor's father right when insemination is performed by a licensed physician on a married woman. This severing is consistent with the rule of law's limitation of parentage: a child has one father and one mother, no more and no less. In the case of a woman married to an infertile man, the rule of law declares that the husband is the child's father and not the sperm donor. In the case of an unmarried woman, there is no husband to assume the role of father. A court, ever eager to promote fatherhood, allows the donor the appellation "father" and awards him visitation.

Illustrative of this scenario is the California case of *Jhordan C. v. Mary K.* [9] Although the court never tells us that Mary K. is a lesbian, the opinion does reveal that Mary decided to have a child by "artificial insemination" jointly with "Victoria, a close friend." After making that decision,

> Mary sought a semen donor by talking with friends and acquaintances. This led to three or four potential donors with whom Mary spoke directly. She and Victoria ultimately chose Jhordan after he had one personal interview with Mary and one dinner at Mary's home.

Without discussing Jhordan's sexuality, the court affirmed the award of Jhordan's visitation. The court also rejected Mary's constitutional challenges to the insemination statute, raised on her behalf by her attorney Roberta Achtenberg of the Lesbian Rights Project.

The result in Mary K's case is troubling. While the court did not award Jhordan the joint custody he sought (which would have allowed him to participate in day-to-day decisions about the child), it did grant him father status and generous visitation. However, what I find more troubling is a shift in lesbian legal strategies since the mid-1980s when Mary K. came before a California appellate court. In the past year, I have heard of numerous cases of

gay men who have been sperm donors now seeking court-ordered visitation of three-, four-, ten-, and thirteen-year-old children. The lesbians defending themselves against these lawsuits have often been denied representation and support from the organized gay/lesbian legal community. The gay/lesbian legal reform agenda is devoted to an expansion of the legal concept of family. This may include visitation for gay men who have been sperm donors and now decide to establish father-right. With the rule of law in their favor, gay men who have been sperm donors can most often win an award of visitation. It does not matter whether visitation is desired by the lesbians who have been caring for the child since birth. And it matters little whether visitation is desired by the child, for courts will presume and court-ordered psychologists will declare that a child should have contact with a "father."

If we center real lesbians rather than gay/lesbian concerns, this controversy demands a different result. The rights of men, whether gay or not, are not the focus of any lesbian legal theory. Just as marriage has a legal history of dominance of men over women, so too does father-right. What needs to be preserved is lesbian choice, not father-right. Likewise, if we center lesbians rather than law—even law as expressed by the lesbian/gay legal reform movement—our loyalties are undivided. Again, what we must preserve is lesbian choice, not the legal category of family, however alternative or expansive.

The centering of lesbians is more difficult when the dispute is between two lesbians. In a situation in which two lesbians have a baby, the biological mother is the legal mother. The other lesbian is profoundly "other": she is a legal stranger to her child, just as she is a legal stranger to her lover. As in the case of lovers when no child is involved, centering lesbians requires a distinction between situations in which third parties are involved and situations between lesbians. In situations involving third parties, legal tools may prevent the operation of laws that privilege the legal category "family" in the event one of the lesbians dies or becomes incapacitated. The death or incapacitation of the biological/legal mother can interfere with the relationship between the "other" mother and the child. The biological mother can express her desires in a will or other document, but although the law at times regards children almost akin to property, in fact they are not property and cannot be willed. However, a court can consider the biological mother's statement in the event of a custody dispute. A medical guardianship is another document which can allow an adult to make medical decisions for a child. Like the wills and powers of attorney, these documents are outer-directed and not intended to give the lesbians rights against each other.

As in relationships without children, many suggest the solution of contract. A contract cannot have as its subject the child (this would be baby-selling and considered illegal), but a contract could give the adults rights against each other. However, the contract solution suffers the same problems in this context as in a childless context. The danger is that lesbians adopt the assumptions of

contract and that particular lesbians may be disempowered by the operation of those assumptions.[10]

The legal solution most often posed has been adoption, a recognized legal procedure that allows a nonbiological parent to become a legal parent. However, until very recently courts have been unanimous in their conclusion that parents are limited to a mother and a father: a child cannot have two mothers by adoption or otherwise; and a female parent must be a mother. Lesbian legal reformers have argued this point in impressive scholarship and in the courts. A 1991 District of Columbia opinion is apparently the first to allow one lesbian to adopt the child born to her lover.[11] The court was troubled by the statute that provided that an adoption terminated the rights of the biological mother. The court decided, however, that the statute's language was only directive; the biological mother's rights did not have to be terminated. In this same case, the court also allowed a previously adopted child to be adopted by the other lesbian parent as well, and there have been a few cases of two lesbians simultaneously adopting one child.

Absent an adoption, there are legal theories that might support a lesbian parent being awarded custody of a child should the biological parent die or become incapacitated. Such theories include de facto parenthood (also called psychological parenthood), equitable parenthood, and in loco parentis. In all these theories, the adult's actions that emulate parenthood are adjudicated by a court to determine whether or not the adult will be legally deemed a parent. In many of these cases, the adult's actions are judged not only against an ideal parent but also against any other parentlike adults in the child's life. At times, formal legal rights would be in direct conflict with these creative theories. For example, should a biological mother die, custody of the child might be awarded on the basis of the recognized father status of a sperm donor rather than the less formal psychological-parent status of the lesbian parent. If the parents of the deceased lesbian seek custody of the child from the surviving lesbian parent, their grandparent status is entitled to some weight but is less compelling than father status.[12]

All of these theories, including adoption, can serve as tools to forestall the effect of the rules of law that would otherwise operate. In that capacity, I think they can be useful. Using these tools in a prospective way as much as possible is also good practical advice. Thus, to the extent any tool can dissuade third parties from seeking custody of a child, the more useful the tool. However, when these theories are the basis of a contest waged between lesbians in the legal arena, we turn the tools and rules of law on each other.

If two lesbians decide to have a child together, do so, and then decide to separate, the child's future becomes uncertain. In the best of all possible lesbian utopias, the two lesbians would exercise their lesbian choices in a way that honored themselves, each other, and the child. There would be no need to resort to the rules of law. But one lesbian can decide that she is the true and

only mother, and if she is the biological mother (and there is no adoption), the rule of law will enforce her decision. And the other lesbian can sue her ex-lover for visitation of the child, utilizing theories to persuade the court that she should be accorded at least some parental rights. She will be represented by gay/lesbian legal reform organizations, arguing for recognition of the lesbian family as analogous to the nuclear family. Other gay/lesbian rights organizations will file briefs as interested parties urging the court to expand the legal category of family to include both lesbian parents (and perhaps even the gay male sperm donor). In the courts that have considered this scenario, the nonbiological lesbian parent will lose. Despite the courts' opinions, there is a ground swell of liberal popular support for expanding legal concepts of parenthood and family to include the nonbiological lesbian parent.

The case of *Alison D. v. Virginia* M. is an example.[13] Decided in 1991 by New York's highest court, the decision rejects a claim for visitation from a lesbian nonbiological mother, deciding that she is not a "parent" within the meaning of the statute. Represented by Paula Ettlebrick of Lambda Legal Defense and Education Fund, and supported by briefs from the NOW Legal Defense Fund, the ACLU, and the Gay and Lesbian Parents Coalition, Alison D. argued that she was a de facto parent entitled to visitation. Although the same court had the year before given an expansive reading to the term "family" in a rent-stabilization case involving a surviving male lover, the court here declined to give a similar expansive reading to the term "parent." Judge Judith Kaye, the only judge on New York's highest court who could even remotely be called a feminist, was the sole dissenting judge.

Judge Kaye's dissent and many reactions to the case from heterosexual feminists and liberal nonlesbians are telling. Although a few feminists worried about the consequences for violence should de facto parent visitation include an abusive boyfriend of a battered woman, most sought to bring lesbians within preestablished legal definitions. Liberals extended their sympathies that lesbians were once again excluded.

Because Alison D. and Virginia M. are in conflict, it is difficult to center the concerns of both lesbians and not be inconsistent. Yet this inconsistency—and the dispute itself—are constructed by the rule of law. To the extent that the biological mother Virginia M. supports her denial of visitation to her ex-lover with her superior position within the rules of law, she is domesticated by the legal regime. And to the extent that the nonbiological mother Alison D. believes she is entitled to visitation because she can fit herself into legal theories like in loco parentis, she is also domesticated by the legal regime. And to the extent that both lesbians appeal to the legalism inherent in categories like "parent" and "family" as they attempt to settle their problem, they import the law into their lesbianism. Lesbianism is limited by legalism.

III. Conclusions

I am less concerned with the legal positions of Alison D. and Virginia M. than with how they came to make their claims in courts of law. This is not squeamishness about public revelation of lesbians disagreeing but concern that we are being used by the law rather than using it. My concern is the same whether Alison D. wins or loses; my concern is even more pronounced if Virginia M. merely appeals to her superior legal status to resolve disagreements with the woman she once loved. When we use the law against each other, we are ultimately being used by the law: to sustain its own (nonlesbian) power. We sustain the law's power when we appeal to its categories rather than empowering our lesbian selves by appealing to lesbian categories.

We must decide whether or not "mother" (or "parent") is a category that can be lesbian as well as legal. Just as I do not find convincing the argument that as lesbians we can enter the state-created marriage contract and transform it by our very existence, I do not think that as lesbians (either singly or in pairs) we can enter the state-defined parent role and transform it. Perhaps I am not optimistic enough. Or perhaps I am too intimidated by the rules of law that operate in the parent-child relationship to give parents virtual ownership over their children unless the parents are not model state citizens. I am intimidated by the class and antilesbian model of the well-educated and well-liked Jane Doe and her summers with her well-adjusted and above-average son. And I am intimidated by judicial disapproval profound enough to take a child away if a mother does not dress her children correctly in the Mississippi cold or does not dress herself correctly in feminine attire. Even absent a lesbian mother, the legal category of mother operates restrictively and punitively.

Ultimately, I think that the legal category of mother (or even parent or family) is too stifling for our lesbian imaginations and relationships. The category of mother domesticates us. We have difficulty thinking in other than its terms. While I am not abandoning its strategic use, I am suggesting we recognize strategic uses of the legal category of mother in litigation, even as we attempt to develop lesbian categories for the complex relationships between lesbians and children. If we are ever to move beyond our domestication and ensure lesbian survival on lesbian terms, we must theorize against the dominant discourse of the legal regime, including the legal regime that codifies the category mother.

Notes

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reviewers at *Hypatia*, and the invaluable assistance of Leslie Thrope. Portions of this article appear in Robson (1992).

1. The term "colonization," however, has been used metaphorically to describe a process of overlegalization. For an extended discussion of the concept of the "colonization of the life-world," see Habermas (1984, 1985). I employed the term "colonization" in an earlier form of theorizing about this process; see Robson and Valentine (1990).

2. Yet domestication also has within it the idea of its opposite. To have been domesticated, one must have once existed wild, and there is the possibility of a feral future. To be feral is to have survived domestication and be transformed into an untamed state. Post-domestication lesbian existence is one purpose of a lesbian legal theory: if we can confront the ways in which we are domesticated, we can begin to challenge our domestication.

Despite the domestication metaphor, I am not conceptualizing lesbians as women who have been trapped in little houses on the prairie by mean men or as wild animals who have been harnessed to plow the soybean fields. While these are tempting images that foster an idealized version of our innocence and victimization, such images conflict with my experience. To use the postmodern phrase, we are "always already" domesticated. We are born and socialized with reference to the dominant culture. However, I do not believe that we are necessarily so constricted.

3. Among the many fine pieces of legal scholarship on lesbian motherhood issues, the following are especially noteworthy: Polikoff (1990); Sella (1991); Sheppard (1985); and Dooley (1990). Also especially noteworthy is an anthology of lesbian parenting issues: Pollack and Vaughn (1987). Essential reading for anyone considering lesbian mothering issues is Allen (1986).

4. T.C.H. v. K.M.H., 784 S.W.2d 281, 284-5 (Mo. Ct. App. 1989).

5. S.N.E. v. R.L.B., 699 P.2d 875 (Alaska 1985); Doe v. Doe, 452 N.E.2d 293 (Ma. 1983); M.P. v. S.P., 404 A.2d 1256 (N.J. 1979); Guinan v. Guinan, 102 A.D.2d 963, 477 N.Y.S.2d 830 (3rd Dep't 1984); Stronman v. Williams, 353 S.E.2d 704 (S.C. 1987).

6. White v. Thompson, 569 So. 2d 1181 (Miss. 1990).

7. Doe v. Doe, 284 S.E.2d 799 (Va. 1981).

8. In re Breisch, 434 A.2d 815 (Pa. Super. Ct. 1981).

9. 179 Cal. App.3d 386, 224 Cal. Rptr. 530 (1st Dist. 1986).

10. The assumptions of contract include equality expressed in terms of bargaining power. Historical, cultural, and personal feelings of entitlement to bargain or lack of entitlement are irrelevant. For further discussion, see Robson and Valentine (1990) and Robson (1992).

11. In re Adoption of Minor T., D.C. Super Ct Fam. Div. Nos. A-269-90 and A-270-90 (August 30, 1991).

12. See, e.g., In re Pearlman, Florida Circuit Court Broward County, No. 87-24926 (March 31, 1989) 15 FAMILY LAW REPORTER 1355 (1989).

13. 77 N.Y.2d 651, 572 N.E.2d 27, 569 N.Y.S.2d 586 (N.Y. 1991).

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