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Unsex Mothering Responses: Berta Esperanza Hernández-Truyol

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Revisiting Mothering? – A Mother’s Thoughts

A Response to Darren Rosenblum’s *Unsex Mothering: Toward a Culture of New Parenting*

Berta Esperanza Hernández-Truyol^[1]

I came to motherhood (“am2”?)^[2] late in life. Mothering is the most complex, difficult, challenging work in which I have ever engaged. It also is the most rewarding, exciting, frightening, all consuming work that I will ever do. I would not trade this life for anything.

The night before this essay was due, I was up late (well, late for me, the mother of a seven-year-old boy Nikolai and six-month-old twins Natalia Luz and Nadal Sergio) working on the last set of edits—putting the finishing touches, if you will—on the draft of my musings on Rosenblum’s provocative piece. At 10:55 I could no longer keep my eyes open so I put the draft to bed, planning on reviewing it one last time with fresh eyes in the morning, right after I dropped Nikolai off at the bus to school. Pleased with how the work shaped up, I saved the draft, turned off the lights and headed for bed.

The house was dark and quiet, everyone else asleep. At 11:01 I got in my warm bed and sighed out my exhaustion. My head hit the pillow, and I immediately started to drift off. And off went the baby monitor. I looked at the clock: 11:03 stared at me in big red numbers. On went my glasses to search for the bottle of milk to fill up her belly in the hopes of a few hours’ rest after the feeding. That is when I realized that I was not in the final stages of my draft at all; the essay that I needed to write had not even started being written. The draft with which I had been so pleased a few minutes earlier revealed itself to be an irrelevancy; a work of the head. I needed to write this with the heart.

I. Mothering: Revisiting the Re/Production Divide

Not that the essay I would have written that I had titled *Mothering: Revisiting the Re/Production Divide* lacked value. But conversations about families, about mothers/fathers/parents, and about naming require more than an analysis of law, culture, status, and gender/sex. They require a discussion of people, feelings, desires and everyday realities that defy categorization along legal lines—thin or thick.

The *Revisiting* essay engaged the law and culture relationship, which is one of my obsessions as a law professor. After having given much thought to the law and culture conundrum (does law reflect culture or does culture reflect law?), I have surrendered to law's inefficacy in changing culture, notwithstanding the Swedish experience that Rosenblum's work discusses.

In the United States, the 1872 case of *Bradwell v. Illinois*^[3] to which *Unsex Mothering*^[4] refers articulated the popular view that still prevails: the reproductive sphere, the family, the private, is the proper place of and for womanhood. Conversely, the productive public sphere—work, the state—is the location designated as man's proper domain. Today, as well as 140 years ago, religion, society, culture, and even law, as *Nguyen v. I.N.S.*^[5] tacitly suggests, still largely adhere to the sentiments expressed by the *Bradwell* Court: “the paramount destiny and mission of woman are to fulfil [sic] the noble and benign offices of wife and mother.”^[6] The cultural tropes engendered by the post-industrial revolution era relegated and embedded the productive/reproductive roles along the male/female lines.

Sex equality jurisprudence has debunked some of the *Bradwell* assumptions, eroded the male/female divide, and resulted in women obtaining some rights.^[7] Nonetheless, it is interesting how equality jurisprudence, driven by a liberal sameness equality model, focused much on providing men entrée into women's domains. One example is the case of *Mississippi University for Women v. Hogan*,^[8] which allowed access to men to nursing schools that had prior been for women only. Another is *Craig v. Boren*,^[9] which gave 18–20-year-old young men access to low alcohol content beer because 18-year-old young women had access to it.

More troubling, however, is the equality jurisprudence that has emerged in the area of reproduction—an area in which, as Rosenblum's work concedes, sameness equality cannot exist because of the different roles of men and women in reproduction. Only biological women, regardless of their gender identity or their sexuality, can become pregnant and give birth. In *Geduldig v. Aiello*,^[10] the Court considered whether the exclusion of pregnancy and childbirth benefits from an insurance plan constituted unconstitutional sex discrimination. The Court concluded that the plan did not effect a violation of equal protection as not all disabilities must be covered and because the class—non-pregnant persons—included both men and women. To be sure, it speaks volumes that the unique ability to conceive, to be pregnant, and to give birth is deemed a disability in the eyes of the law. This remains the law in 2012.

But the concern is more than the case law. As Rosenblum's work confirms, culture, as reflected in many social structures, from work to family and from school schedules to religious beliefs, reinforces the male/female binary. In 2001, 68% of fathers and 69% of mothers agreed with the following statement: “[i]t is much better for the family if the father works outside the home and the mother takes care of the children.”^[11] In 2007, only 21% of mothers of minor children who work outside the home believed that full-time work outside the home would constitute the ideal situation for them; 60% said that part time work would be ideal and 19% would prefer not to work at all.^[12] Similarly, only 16% of stay-at-home mothers of minor children believed it would be ideal to work full-time outside the home, 33% believed that part-time work would be ideal, and almost half, 48%, believed that it was ideal for them not to work outside the home at all.^[13] By contrast, 72% of fathers say that the ideal situation for them is to work full time outside the home.^[14] These numbers provide echoes of *Bradwell* and suggest that the popular views of mothering and fathering and the roles each plays in children's lives is not much changed from the Court's description of the sexes' separate spheres.

To be sure, the sexed expectations around parenting are burdens—and have likely been burdens since the emergence of the binary relegation of family roles—to those who do not conform to the social, cultural mandates. A dear friend of Vivian’s, Pat, a woman in her late 70s, has written a delightful collection of essays titled *No More Dead Cats: Personal Essays From the Second Half of Life*. [15] In extraordinarily honest pieces, she reflects on her life growing up in a “Depression family, a family for whom work was to be endured simply because it put food on the table.” [16] Pat confesses that she was resentful because her mother went to work shortly after she was born. This reality meant that Pat was raised by her grandmother, and she felt cheated. When she married and had children, she was happy to leave behind the series of meaningless jobs she had worked to be a full-time mom. But life has a way of teaching difficult lessons and, she confesses,

I know, now, that my mother was better off at work and that I would have been, too. I wanted to give my children what I’d never had, but I suspect that they paid a heavy price for my sacrifice. I often felt trapped and isolated, furious that I had no life of my own. [17]

This narrative about sexed cultural idealizations and pressures reflects the reality of the cultural pull for women to stay home and, impliedly, the push for men to be in the work force. Those pressures need to be released so that individuals, regardless of sex/gender, have the freedom to explore their niche in life, including family life—a niche that might ebb and flow and change over time. Culture—both social and legal—needs to be restructured in order to accommodate such individual choices and desires within the realities of each family’s existence.

This strong cultural undertow is not limited to the United States. Rather, it’s fairly widespread, even in settings that might be surprising. The example of Cuba is telling because one can compare *mujeres cubanas* in Cuba with *mujeres cubanas* in the diaspora to see the impact of culture.

Initially, it is important to note that the *cultura* Latina operates within relatively strong sexed binaries. The *marianista* paradigm mandates that women be self-sacrificing and live for the family. They belong in the private sphere, live to please, must be pure, and are submissive. On the other hand, the better known *machista* paradigm relegates men to the public sphere to be breadwinners and strong.

Interestingly, in Cuba women had a long history of fighting for equal rights—but these battles were within the confines of cultural parameters. [18] In fact, the women’s movement was called *movimiento femenino*, and it incorporated the women’s focus on family. The early struggles sought to obtain property and family rights and were followed by the quest for the vote and for equality, the latter being embedded in the 1940 Constitution. Notwithstanding the formal legal protections, inequality persisted as the reality for women.

Castro’s revolution seemed to provide the platform for equality, with the leader himself designating the move toward women’s equality a revolution within a revolution and encoding equality in the 1976 Constitution. Being a communist state, the emphasis is on production, not reproduction. To be a productive citizen, you have to work, which signified that women had to join the workforce. Moreover, beyond the equality mandates of the constitution, laws in Cuba dictate men’s equal participation in housework and child care. Notwithstanding the legal structure, women in Cuba bear a double burden: working outside the home all day and then working at the home and caring for their

children and husbands at night.[19]

That culture drives the binary is evident if one looks at Cuban women in the diaspora, particularly those living in the U.S. Their migration experience distinguishes them from their counterparts in Cuba and they exist in the non-communist government framework of the U.S. Significantly, there is a high premium on preserving cultural tropes because

sexual and gender role[s] of women serve a larger social function beyond the personal. They are used by enemies and friends alike as proof of the morality—or decay—of social groups or nations. In most societies, women’s sexual behavior and their conformity to traditional gender roles signify the family’s value system.[20]

Cubanas in the U.S. have turned to work outside the home because of the economic exigencies of exile. Yet the traditional lifestyle of multiple generations under one roof has facilitated the preservation of gender roles, and women remain the caretakers of family. Like their counterparts on *la isla*, *cubanas* are still expected to fulfill their duties in the family sphere: do their mothering. Those parenting social norms continue to name the mother the primary member of the family, and indeed those social norms travel across cultural boundaries. The separate spheres still prevail in life.

II. Real Mothering

This returns me to last night’s baby monitor’s transmission of crying baby. Mothering is, as Rosenblum notes, “diaper-changing and night feedings.”[21] But it seems improvident to categorically state that these acts “matter more than gestation, lactation, or the presence of genetic material.”[22] There are biological as well as social roles that comprise the mother. Neither should be marginalized nor discounted although certainly they both don’t drive feelings all of the time.

To be sure, as Rosenblum amply exposes, the mere act of carrying a child does not make the person a “mother” as is patently the case in surrogacy. And many of us are mothers without having carried a child. In my case, my partner carried all of our children—a configuration that I find surprisingly absent from Rosenblum’s categorizations. In our case, she is the birth mother and legal mother—a status that is not reflected in the “am1” designation.[23] That category appears to presume that a person who is pregnant gives up her child for adoption. I am the adoptive mother “am2”—a legal maneuver necessitated by society’s and law’s failure to recognize the legitimacy of our relationship. Both of us are very real mothers—thankfully, given our last pregnancy blessed us with twins. They are a full time enterprise for both of us.

Mothering is messy. It is more than dirty diapers and feeding. It is sleep-deprivation. It is bad hair in the morning that stays all day. It is rushing to take a shower first thing because if you miss the five-minute window when the kids are asleep you might not get to it until much later, if at all. It is staying in pajamas until the afternoon on a work day not because you want to but because you have not had a moment to change. It is cleaning entire bodies covered with poop that miraculously escapes the confines of the tight diaper. It is holding teary, snotty faces close on one’s favorite silk shirt and cashmere sweater. It is showing up to work with spit-up on your sleeve. It is reaching the end of the day with pee, spit, and snot all over your clothes from the day’s happenings. It is giving up control of space and time. Kitchens do not get cleaned when babies are crying. Living rooms don’t look tidy

when there are swings, toys, and blankets lying around. Bedrooms don't get quiet when it's time for bed if babies need attention. Bedtime is their time, not yours. Time is their time, not yours, hence: missed deadlines, lateness to meetings, forgotten meetings, meals standing up, and even (gasp) eating pizza with your hands . . . and then not being able to clean up.

And all this is for babies, but the messiness continues with the mothering of toddlers, young children, and teenagers. There are endless activities, formal and informal alike: parent-teacher conferences to attend, field trips to chaperone, cars to and from sports practices and games to chauffeur, piano practice to oversee, and so on. The stark reality is that the parent present at most of the functions is the mother.

Natalia's Tuesday night feeding, after the unwelcome awakening, was an exciting one. After that 11:03 screeching call, Natalia slept soundly until 7:45 Wednesday morning. But guess what? It happened all over again Wednesday night. So the cycle began again.

However, Tuesday night was not so smooth and peaceful for Vivian. She is breastfeeding Nadal, and he woke up every hour on the hour, screaming as Natalia had done at 11:03. Those dreamy looks he gives Vivian while she feeds him were not the salient memory of the sleepless night. And guess what? It happened again Wednesday night. So the cycle began again. Yet there is one reality the cycle does not break: breastfeeding has created a distinctly different bond between mother and child than my bottle-feeding has. I do not get dreamy eyes from Natalia when I give her a bottle, regardless of the hour. Feeding children is a social function, but breastfeeding also has a biological foundation that indeed does have an impact on the forged bond.

I am not suggesting that lactation alone creates such a mothering bond; wet nurses probably had different relations with the infants they fed than a mother would. And not all mothers who lactate choose to breastfeed their children. But those lactating mothers who choose to breastfeed their children do experience a different bond.

Rosenblum's piece is path-breaking because it takes on a hugely complex institution—the family. The title confesses the cultural foundations of the attributed roles and a desire to change them. That is gutsy and welcome.

The work defines mothering as the primary parental relationship—the role that “performs the bulk of childcare.”^[24] I fully concur with Rosenblum that anyone who desires to mother can do so, regardless of their sex, sexuality, or gender identity. Nonetheless, we cannot ignore *her story*, and for better or for worse—although recent figures reflect that most women with children want to be caretakers and a large majority of men with children want to work outside the home—the reality is that women, because of culture, law, religion, and economics as well as because of desire, have been the primary caretakers. To be sure, that more men want to be involved in the family and choose this path is an event to celebrate. Thus, mothering should be a sex-neutral institution. Given that, it seems improvident to tether the name to a sex.

In the abstract, I have no problems with moving toward a use of the more neutral “parenting” to refer to the loving care we give our children. In fact, the Latin root of the word, *parere*, means “to bear.” While that still seems to be more like mother, it appears to be more inclusive.

However, given my language lens, I do want to raise a possible problem with the shift: what may occur in translation with the exportation of the idea(l) of de-gendering. English is not a gendered language like Spanish is, where everything has a gender. Here is the catch: mother is *madre*; father is *padre*. If we are going to talk about the parents, the term is gendered male: *los padres*, referring to mother and father. If the idea is exported, as often interesting and compelling theoretical moves are, the shift from mothering to parenting, in Spanish translation would result in gendering the concept male, thereby giving male primacy to one area in which female primacy has been the norm.

It is significant that still in the twenty-first century, compatible with the mothering story, a large number of women express the desire to stay home and perform primary parenting (rather than having a full-time job outside the home). On the other hand, also consonant with the narrative, the majority of men's stated preference is for full-time work outside the home. The cultural tropes still dominate. That said, every person should be free to perform whatever role within the family s/he desires and be called whatever they choose.

In our own life, Vivian is staying home with the babies while Nikolai goes to school, and I go to work outside the home—although this Spring 2012 semester I am on partial family leave. This means, quite honestly, that she has the more difficult work. Ours is a practical decision: law professors are better compensated than school teachers. But I would love to be a stay-at-home mom, too.

And what we do at home depends on what needs to be done; not one task is defined around sex/gender roles. Whoever remembers and is not holding a baby takes out the garbage on garbage day—this with Nikolai's assistance. Nikolai feeds the dogs while one of us fixes dinner and the other cleans up. One of us changes the babies for nighttime routines, and the other prepares the formula. One of us feeds the babies while the other does homework with Nikolai. And everything changes from day to day, from moment to moment. We are both real moms doing the very real, very hard, hugely frustrating, even more exhausting and exuberantly rewarding work of mothering.

Rosenblum's wonderful piece started with a story. I want to close with a story. As I mentioned earlier, I take Nikolai, our seven-year-old second-grader to the bus. The stop is at a park where moms and dads go to drop off and pick up their children. Often in the afternoon the parents (at this time almost exclusively moms and an occasional grandparent) chat while waiting for the bus to arrive with the precious little ones. One week ago, two moms—both happily married—and I were chatting. We talked about the babies, how they are growing, how cute they are, all the things that Vivian and I do for them, and the adorable things they are doing. And these two wonderful women with beautiful families and participating husbands put their arms around each other and said: "We have been talking, we want what you and Vivian have." Hmmm, maybe there is something unique to Mothering after all.

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[2] See Darren Rosenblum, *Unsex Mothering: Toward a New Culture of Parenting*, 35 Harv. J.L. & Gender 57, 70 (2012). I am not certain how Rosenblum would categorize me. I am a legal mother by virtue of the fact that I adopted my children. That would make me an "sm3." However, in Rosenblum's model, the "sm" nomenclature is for "gestational surrogacy, under traditional terms."

This might not be then applicable to our family, which is a two-mom family in which my partner Vivian birthed the children. Because I am a legal mother by virtue of adoption, I am an am2. However, the birth mother is also a legal mom, and we are both real mothers; in the “am” scenario that Rosenblum discusses, it seems that the “birth mother” is not a continuing presence in the family.

[3] *Bradwell v. Illinois*, 83 U.S. 130 (1872).

[4] See Rosenblum, *supra* note 2, at 68.

[5] See *Nguyen v. I.N.S.*, 533 U.S. 53 (2001).

[6] *Bradwell*, 83 U.S. at 141.

[7] See, e.g., *Reed v. Reed*, 404 U.S. 71 (1971) (invalidating an Idaho statute’s provision that “males must be preferred to females” to administer the estate of one who dies intestate); *Frontiero v. Richardson*, 411 U.S. 677 (1973) (establishing the “right of a female member of the uniformed services to claim her spouse as a ‘dependent’ for the purposes of obtaining increased quarters allowances and medical and dental benefits . . . on an equal footing with male members”).

[8] *Mississippi Univ. for Women v. Hogan*, 458 U.S. 718 (1982).

[9] *Craig v. Boren*, 429 U.S. 190, 192 (1976) (concluding that an “Oklahoma statute . . . [that] prohibits the sale of “nonintoxicating” 3.2% beer to males under the age of 21 and to females under the age of 18 . . . constitutes a denial to males 18-20 years of age of the equal protection of the laws in violation of the Fourteenth Amendment”).

[10] *Geduldig v. Aiello*, 417 U.S. 484 (1974).

[11] Tamar Lewin, *Study Finds Little Change in Working Mothers Debate*, N.Y. Times, Sept.10, 2001, at A26.

[12] Pew Research Center, *Fewer Mother Prefer Full-time Work* (July 12, 2007), available at www.pewsocialtrends.org/2007/07/12/fewer-mothers-prefer-full-time-work/.

[13] *Id.*

[14] *Id.*

[15] Patricia Mitchell Stamm, *No More Dead Cats: Personal Essays from the Second Half of Life* (2011).

[16] *Id.* at 41.

[17] *Id.*

[18] See Berta Esperanza Hernández-Truyol, *Familias Sin Fronteras: Mujeres Unidas por Su Historia*, 15 Fla. J. Int'l L. 321 (2003).

[19] See Lois M. Smith & Alfredo Padula, The Cuban Family in the 1980's, in *Transformation and Struggle: Cuba Faces the 1990's*, at 177 (Sandor Halebsky & John M. Kirk eds., 1990).

[20] Oliva M. Espin, *Women Crossing Boundaries: A Psychology of Immigration and Transformation of Sexuality* 5 (Psychology Press 1999).

[21] Rosenblum, *supra* note 2, at 71.

[22] *Id.*

[23] *See id.* at 70.

[24] *Id.* at 67.