

LEGAL IMAGES OF FATHERHOOD:  
WELFARE REFORM, CHILD SUPPORT ENFORCEMENT, AND  
FATHERLESS CHILDREN

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ABSTRACT

For centuries the definition of fatherhood under American law was simple: the mother's husband. The dramatic shift in family composition over the last several decades in the United States has made the marital presumption increasingly inadequate as the sole definition of fatherhood under the law. Married mothers and traditional families are on the decline. The functional meaning of fatherhood has also changed significantly over time. Although many debate the extent of the change, most agree that the once clearly defined role of mother as caregiver and father as breadwinner has eroded. Scientific advances from genetic testing to new reproductive techniques have also made defining fatherhood more complex. The law has made some attempt to refine its definition of father in the face of these changes. In a series of cases defining the rights of unmarried fathers, the United States Supreme Court recognized that both biology and care taking are essential in defining fatherhood. The law has also given limited recognition to men who have served as "social" fathers. More recently, there have been policy and legislative efforts designed to strengthen and facilitate the bonds between children and their fathers. While many of these new policies are designed to encourage fatherhood within marriage, many policymakers have come to recognize the importance of creating social and economic supports for unmarried fathers to foster continuing paternal involvement in children's lives.

A series of recent judicial decisions and legislative enactments

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threaten to push fatherhood back into a narrow box. This new definition of fatherhood has developed in the context of a series of cases in which men have assumed the role of father in children's lives and later, often after many years, seek genetic testing to be relieved of the legal obligations of fatherhood. While such "delegitimizing" of children would not be permitted under rules establishing fatherhood based on marriage or care taking, these definitions of fatherhood are being increasingly rejected in favor of a single criteria for fatherhood based on biology. This trend appears to be one of the unintended consequences of three decades of federal and state legislation designed to reform the nation's welfare system. Applied most aggressively against low-income fathers of children receiving public benefits, welfare-driven child support policies are pushing those fathers to seek disestablishment of paternity. As a result, children are becoming fatherless and the very laws designed to protect those interests undermine the state's interests in collecting child support, preserving families, and protecting children. This Article explores this connection between the evolving definition of fatherhood based exclusively on biology and developments over the last three decades in welfare and child support law. The Article concludes with proposals for shaping policies that balance the need for appropriate child support enforcement with the overarching goal of keeping fathers in children's lives.