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## When it comes to custody, it's a women's world

by Rabbi ABRAHAM UNGER, Ph.D.

I am a rabbi and professor. I have spent the better part of my life working with young people, from Sunday school students to undergraduates. Most of all, I am a father. A single father. I pick up my kind, creative and inquisitive identical twin sons Rafi and Ari everyday from school. I make and take them to Doctor's appointments. I am, frankly, as connected to my children as any female parent could be. Sometimes Rafi or Ari call me "Mommy Daddy." When I asked them why, they answered, "Because you're half Mommy and half Daddy."

We Dads in the park look distantly at each other, each of us alone. Society has not yet opened a collective space for us. There are no regularized "Daddy and Me" programs, or local Dads' clubs with the kind of expansive network Moms of young children take for granted, whether married or single.

Regardless, I enjoy each day as a father, experiencing the bounty of his blessing of parenthood. I stand, by my mere presence every afternoon at the classroom door, or in buying clothes at the local children's boutique, in opposition to the one fundamental social and legal presumption that still stands unquestioned in flagrant violation of the 14th amendment: that a male parent can indeed raise his children equally as well as a female parent. Women's rights are already a presumption; gay marriage is fast becoming legalized, but the equal access of single fathers to their children is a subject still under the immoral weight of decades of unquestioned discrimination.

Here is concrete proof of this assertion: in my own state of New Jersey, family law scholars Gary Skoloff and Laurence Cutler state unequivocally in the 2013 edition of their authoritative reference work, "New Jersey Family Law and Practice," that the doctrine of Tender Years is still in place. The doctrine of Tender Years essentially claims that children of divorce should live with their mothers at all costs. Many scholars argue that the children's Best Interests doctrine has replaced this position, but Skoloff and Cutler lay it openly on the line.

There is an industry that has grown up around the prejudice that women usually make the best single parents. To borrow the term from my academic discipline of American political science, there is an "Iron Triangle" of intertwined interests between matrimonial attorneys, family court judges and forensic psychologists used by lawyers and courts as "experts" often seemingly retained to pronounce the mother as the more competent parent. Leftover generational presumptions about men, stemming from their historic role as the higher wage earners often absent from the home, but exerting inflexible authority nonetheless, still permeate family law proceedings.

All of this while scholars such as Markham, Ganong and Coleman have found that in fact it is the female parent who is more prone to engage in non-cooperative co-parenting behaviors, a truth the Iron Triangle does not admit. Why? I can only surmise in this regard. But, is it too much of a stretch to consider that the profit motive runs deep in human beings? Perhaps the Iron Triangle has to therefore feed off of each party in terms of sustaining current and future retainers — yes, even supposedly neutral judges must retire somewhere and they sometimes retire to lucrative contracts with law firms — so the money keeps circulating among the interested parties

to create a sure source of ongoing revenue. And if that is too much to accept as a possibility, there is certainly a “clubiness” at work among lawyers, judges and experts in state fiefdoms of family law just as in any other industry. These judicial players see each other collegially at conferences and events. Why rock the boat? Better to go along as amoral cogs in the wheel than act as courageous standard bearers of the Constitution and its progress.

There was once a scholar named Judith Wallerstein. She passed away last year at the ripe age of ninety years. Her work and her work only, is the primary source of social science scholarship cited by the courts. Unfortunately, she began her work over forty years ago and did not pay much heed to fathers’ voices or the male presence in the lives of children of divorce. Though numerous other scholars such as Fabricius, Braver, Maccoby and Mnookin have come along to rehabilitate the salience of fathers’ equal access in broken families, Wallerstein still solely inhabits the universe of studies cited by the Iron Triangle when it daily reconfirms its ongoing adherence to the doctrine of Tender Years.

Fifty percent of American families are divorced. But, less than fifty percent of the children of those families have equal access to their fathers. This is *the* civil rights crime of our generation. Children losing their fathers through divorce proceedings are deprived and those fathers are being punished for no reason other than the accident of their gender. G-d created Adam and Eve equal. G-d gave them both children to raise and offer the goodness of creation. Through a difficult separation, through divergent opinions, through the mother and father of a shared child coming to see each other as strangers, they are still equal as parents. That equality ought not be violated.

Some may argue that justice is subservient to the law, so, as in my state of New Jersey, the doctrine of Tender Years remains unmoved. But in fact, the law is the servant of justice. The Founding Fathers understood this principle well when they wrote the Constitution. Whatever your G-d may be, it is in that supreme idea of forceful movement forward, of never losing sight of what is right and democratic, that we trust.

I am no hardened conservative, nor even a registered Republican. I am a father and a believer in the Grace of the L-rd and the American promise of equality, whether of gender or otherwise. We must change this together, men and women of conscience alike. The children of divorce, half of our country’s population of young people, deserve nothing less.