Work-Life Balance in the Modern Workplace

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Founding Editor

The series started in 1970 under the dynamic editorship of Professor Roger Blanpain (Belgium), former President of the International Industrial Relations Association. Professor Blanpain, Professor Emeritus of Labour Law, Universities of Leuven and Tilburg, was also General Editor of the International Encyclopedia of Laws (with more than 1,600 collaborators worldwide) and President of the Association of Educative and Scientific Authors Authors. He passed away in October 2016.

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Introduction

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Objective

The Bulletins offer a platform of expression and discussion on labour relations to scholars and practitioners worldwide, often featuring special guest editors.

The titles published in this series are listed at the end of this volume.

Work-Life Balance in the Modern Workplace

Interdisciplinary Perspectives from Work-Family Research, Law and Policy

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CHAPTER 9

"This Is Not an Ideal, Man": Restructuring the Ideal Worker Norm

Ifat Matzner-Heruti

§9.01   INTRODUCTION

Working caregivers in Israel and in the United States (U.S.) find integrating their work and family responsibilities extremely challenging. Many of them realize that being a successful worker and also an involved caregiver is virtually a "mission impossible." Whereas several provisions aiming at aiding working parents have been enacted in the last decades, they were mainly focused on enabling workers to take leave—whether paid or unpaid—at times of birth or sickness.[1] Undoubtedly, enabling workers to take such leave is of utmost importance, yet it is insufficient given the prevalence of the ideal worker norm in numerous workplaces. According to this norm, the ideal worker is someone who has to fulfill inflexible workplace demands, such as working full-time and overtime without taking time-off for family responsibilities.[2] The assumption is, however, that this norm privileges fathers but discriminates against working mothers who cannot be ideal workers due to their domestic responsibilities.[3] Such assumption, I argue, is a major reason for the pervasiveness of the total and strict practices in many workplaces that are responsible for the seemingly unyielding work-family conflict. This chapter, therefore, attempts at expanding the work-family debate and research by focusing on fathers, examining how the ideal worker norm is manifested in the lives of many Israeli and American fathers today. In order to do so, the chapter uses masculinities[4] scholarship and analyzes the complex interconnection of masculinities

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1. *See infra* section §9.02.
2. *See infra* section §9.02.
3. *See infra* section §9.03.
4. The term "masculinities" is used in the plural form to emphasize that masculinity has numerous impressions and multiple meanings. Masculinities identities are neither fixed nor natural, but are

norms, fatherhood, and work practices in both countries. Such interconnection exposes the messages that fathers receive, according to which their familial contribution, as well as their manhood, is measured by the amount of money they earn, not by the nurture they provide.[5] And because workers in Israel and in the U.S. are evaluated in terms of time, namely the number of hours they work,[6] fathers have to invest most of their time and energy to working, at the expense of their familial responsibilities. The requirement to perform as an always-available ideal worker does not affect fathers uniformly but rather depends on each father's multiple identities and social strata. Essentially, being socially expected to serve as an ideal worker comes with a price fathers have to pay—both those who are able to adhere to the strict norms of the workplace and certainly those who are not. Only when we deconstruct the ideal worker norm with regard to men and fathers can we evaluate the sacrifices they make. Such a deconstruction might be the way to finally dismantle the entrenchment of workplace norms and ameliorate working caregivers' hurdles.

This chapter proceeds in four parts. Part I starts with a cross-national examination of Israeli and American fathers and fatherhood via the lens of masculinities theory's core principles. It shows that masculinity imperatives are in tension with caregiving by fathers, resulting in fathers' difficulties to conceptualize their own identity as fathers. These imperatives include rejecting anything regarded as feminine; constantly proving their masculinity to other men (and to women); and providing economically for their families. The Part demonstrates that these imperatives operate both in Israel and in the U.S., yet they are influenced by each country's specific characteristics. In addition, this Part analyzes the changes in the construction of mothers' dual role as caregivers and employees in Israel and in the U.S., and the impact of these changes on the construction of fathers' dual role. Part II examines, by means of comparison, the role of the Israeli and American states, employers and courts in the creation and stagnation of the father "as a breadwinner" imperative. It shows that while the two countries differ in the level of public support they provide to working parents, they both place fathers as secondary caregivers. It also demonstrates that similar working norms are operating in both countries, according to which the ideal

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rather socially constructed and manifested through performances. *See* Nancy E. Dowd, *Masculinities and Feminist Legal Theory*, 23 Wis. J.L. Gender & Soc'y 201, 241 (2008) [hereinafter Dowd, *Masculinities and Feminist Legal Theory*]; *see also* Nancy E. Dowd, The Man Question: Male Subordination and Privilege, 26–27 (2010) [hereinafter Dowd, The Man Question]; Masculinities and the Law: A Multidimensional Approach 28 (Frank Rudy Cooper and Ann C. McGinley eds., 2012) [hereinafter Masculinities and the Law]; Frank Rudy Cooper, *"Who's the Man?": Masculinities Studies, Terry Stops, and Police Training*, 18 Colum. J. Gender & L. 671, 684 (2009) (quoting Paul Smith, *Introduction* to Boys: Masculinities in Contemporary Culture 1, 3 (Paul Smith ed., 1996); Richard Collier, *Masculinities, Law, and Personal Life: Towards a New Framework for Understanding Men, Law, and Gender*, 33 Harv. J.L. & Gender 431, 471–472 (2010); Ann C. McGinley, *Work, Caregiving, and Masculinities*, 34 Seattle U. L. Rev. 703, 706–707 (2011).

5. *See infra* section §9.01[C].

6. *See* Daphna Hacker, Michal Frenkel and Yael Braudo-Bahat, *Working Families in Israeli Law: Between Neo-Liberalism and Human Rights*, in Gender in Israel 682, 704–705 (Margalit Shilo and Gideon Katz eds., 2011) (contending that Israel and the U.S. share the same neo-liberal organizational culture according to which good workers are measured by the number of hours they work).

worker is considered to be the one who dedicates most of his time and energy to work, without taking time-off for familial responsibilities. What is more, when working caregivers litigate their cases, trying to challenge workplace time demands, courts have been reluctant for the most part to undermine these demands. Such reluctance strengthens the ideal worker norm, making the integration of home and work almost impossible.

After analyzing the multiple ways that the ideal worker norm is reinforced by the Israeli and the American laws, workplaces and courts, Part III aims at deconstructing this norm with regard to working fathers. It uses masculinities theory to exemplify that whereas feminist legal theories argue that men have been privileged by the ideal worker norm, such norm negatively affects fathers. Furthermore, as long as this norm continues to be regarded as a privilege for fathers we can expect little success in achieving gender equality in the home and in the workplace. Hence, investigating how fathers have been impacted by the demands to function as breadwinners and ideal workers sheds light on the complex and multidimensional aspects of these demands in a way that will ultimately lead to their revision and modification. The last part of this chapter develops a twofold strategy to ameliorate fathers' work-family conflict. It uses both core principles of masculinities and neo-institutionalism theories to examine workers' and organizations' motives with regard to work-family policies. The exami-nation demonstrates that employees and organizations are susceptible to similar influences when deciding whether to use work-family policies (employees) or adopting them (organizations). Fathers, for instance, might use these policies if other fathers at their workplace were openly involved in nurturing. Likewise, organizations might decide to adopt certain policies if other organizations in their field did so. Realizing that there is a "domino effect" among employees themselves and among organizations means that work-family advocates should invest their efforts not only in creating legal reforms, but also in collaborating with human resources professionals at leading organizations in order to modify structural norms.

§9.02   MASCULINITIES IMPERATIVES AS MANIFESTED IN THE LIVES OF ISRAELI AND AMERICAN FATHERS

Masculinities scholarship, a cross-disciplinary field of research that emerged in the 1970s and 1980s,[7] investigates the ways men are affected by patriarchy.[8] According to masculinities research, there are universal and common masculine characteristics in societies. Nevertheless, in every particular society the sense of "manhood" has its own

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7. *See* MASCULINITIES AND THE LAW, *supra* note 4, at 1. For an overview of the research of major sociologists, *see* DOWD, THE MAN QUESTION, *supra* note 4, at 28. Nevertheless, the research has developed in other disciplines as well, such as psychology, criminology, feminist theory, queer theory, anthropology, and geography. *See* McGinley, *supra* note 4, at 706.

8. The theory focuses on men and their experiences, and its purpose is to shed light on the ways masculinity produces power but at the same time disadvantages men in patriarchal societies. *See* MASCULINITIES AND THE LAW, *supra* note 4, at 4. Moreover, it exposes the assumptions pertaining to manhood and the various ways in which such assumptions justify ideas and institutions. *See* Cooper, *supra* note 4, at 684–685.

nuances depending on the traditions and cultural context of the specific society.[9] Men's identities, therefore, "are constituted through diverse and socially-contingent practices that, within certain contexts, may be experienced in different ways."[10] Examining masculinities within context is important methodologically as it focuses the attention on the specific aspects of the situation and the system men operate within.[11] Israeli and American masculinities identities are thus influenced by the characteristics of their society and culture, and are shaped by and within those features.[12] And clearly, the way masculinities norms are constructed and understood within each of the societies shapes men's role as fathers.

Many of the core principles of masculinities theory come into force when we deal with fathers, hence via looking through the lens of the theory we will be able to detect the obstacles and difficulties Israeli and American men face as fathers.[13] Researches in Israel and in the U.S. have demonstrated that the gendered division of caregiving and household work is still persistent in both countries: Israeli and American fathers spend less time than mothers caring for children and even less time doing housework.[14] While fathers in both countries do more childcare and household work than their own fathers used to do, mothers still do disproportionately more.[15] A lot has been written about the reasons for this pervasive gendered division, focusing mainly on women's socialization to perform the domestic duties as well as the incompatibility between workplace norms and mothers' needs.[16] As accurate as these explanations might be, they provide merely

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9. *See* Cooper, *supra* note 4, at 684; *see also* David Morgan, *Epilogue*, in MAKING MEN INTO FATHERS: MEN, MASCULINITIES AND SOCIAL POLITICS OF FATHERHOOD 281 (Barbara Hobson ed., 2002) [hereinafter MAKING MEN INTO FATHERS].

10. *See* Collier, *supra* note 4, at 472.

11. *See* MASCULINITIES AND THE LAW, *supra* note 4, at 85.

12. *See* Einat Hollander, *"The New Israeli Man?" Changes in Constructions of Masculinity in an Inter-Generational Perspective* 65 (2007) (unpublished Ph.D. Thesis, Department of Sociology and Anthropology, Bar-Ilan University, 2007) [Hebrew].

13. *See* Dowd, *Masculinities and Feminist Legal Theory, supra* note 4, at 243.

14. In the U.S., *see* Nancy E. Dowd, *Fatherhood and Equality: Reconfiguring Masculinities*, 45 SUFFOLK U. L. REV, 1047, 1053 (2012); *see also* Joan C. Williams and Stephanie Bornstein, *Caregivers in the Courtroom: The Growing Trend in Family Responsibilities Discrimination*, 41 U.S.F. L. REV. 171, 174 (2006); Keith Cunningham-Parmeter, *Men at Work, Fathers at Home: Uncovering the Masculine Face of Caregiver Discrimination*, 24 COLUM. J. GENDER & L. 253, 255 (2013). In Israeli, *see* Nadav Peretz, *The Abandonment of Fathers as Families' Surveillance: Fathers in the Legal Discourse in Israel, in* ABANDONING STATE – SURVEILLANCING STATE: SOCIAL POLICY IN ISRAEL, 1985–2008, 273 (2010) [Hebrew]; Arianne Renan-Barzilay, *Working Parents: Multidimensionalism and Working-Class Social Feminism—A New Theoretical Framework for Reconciling Work and Family in Israel*, 35 TEL AVIV UNIV. L. REV. 310–312 (2012) [Hebrew]; Daphna Hacker and Michal Frenkel, *Active Parenthood and Employment Equal Opportunities: The Need to Change the Characteristics of the Labor Force, AVODA, HEVRA AND MISHPAT* 275, 279 (2005) [Hebrew].

15. For American data, *see* Dowd, *supra* note 14, at 1053; For Israeli data, *see* Daphna Hacker, *Motherhood, Fatherhood and Law: Child Custody and Visitation in Israel*, 14(3) SOCIAL AND LEGAL STUDIES 411 (2005).

16. *See,* e.g., Nicole B. Porter, Caregiver Conundrum Redux: *The Entrenchment of Structural Norms*, 91(4) Denv. UL Rev. 963, 966 (2013); Joan C. Williams and Allison Tait, *Mancession or "Momcession"?: Good Providers, a Bad Economy, and Gender Discrimination*, 86 CHI.–KENT. L. REV. 857, 875 (2011) (contending that "the workplace culture is male-dominated and defined by norms of extreme masculinity"); CATHARINE A. MACKINNON, TOWARD A FEMINIST THEORY OF THE STATE 224 (1989); Joan Acker, *Hierarchies, Jobs, Bodies: A Theory of Gendered Organizations*, 4

partial answers. Masculinities theory complements the vast feminist and work-life research by shifting the focus to men, investigating the reasons for men's lack of involvement in caregiving and housework. It shows that throughout their lives men are subject to masculinity imperatives pertaining to their "proper" role as men and fathers. The three main imperatives include rejecting anything regarded as feminine; constantly proving their masculinity to other men (and to women); and providing economically for their families. While these three imperatives operate both in Israel and in the U.S., they are influenced by each country's specific norms, as will be analyzed below.

[A]   Avoid Acting in a Feminine Way

One of the strongest imperatives of manhood requires men to reject all things defined as feminine which clearly include caregiving.[17] Providing care is associated with women as it requires being soft and empathetic and men receive the message that it is not their "natural" role.[18] As astutely described by Professor Nancy Dowd:

> [A]t the core of fatherhood, however, is a tension that resonates in the contemporary practice of fatherhood. Fatherhood is one of the critical life roles for men, but care of children is significantly at odds with the concept of masculinity.[19]

Not surprisingly, several studies have shown that fathers feel more comfortable performing some kinds of caregiving tasks rather than others,[20] and they also tend to "masculinize" care.[21] Indeed, as professors Marsilio and Roy have demonstrated, "practical and cultural forces often complicate men's vision of themselves as fathers and their ability to nurture their children."[22] Israeli culture and norms thus provide an even greater challenge for Israeli fathers to function as caregivers. In Israel, there is a strong connection between masculinity and militarism due to historical reasons, and on-going security problems.[23] Thus, in order to attain hegemonic masculinity,[24] one

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GENDER & SOC'Y 139 (1990); Kathryn Abrams, *Gender Discrimination and the Transformation of Workplace Norms*, 42 VAND. L. REV. 1183 (1989); JOAN C. WILLIAMS, RESHAPING THE WORK-FAMILY DEBATE: WHY MEN AND CLASS MATTER 88 (2010) [hereinafter WILLIAMS, RESHAPING]; Dowd, *supra* note 14, at 1061–1063.

17. *See* Dowd, *supra* note 14, at 1063.
18. *Id.* at 1063 (contending that "care is perceived as soft, vulnerable, weak—all characteristics associated with women, and again, to be rejected, at whatever cost by men").
19. *See* DOWD, THE MAN QUESTION, *supra* note 4, at 105.
20. *See* Kathryn Abrams, *Cross-Dressing in the Master's Clothes*, 109 YALE L.J. 745, 760–762 (2000) (book review).
21. *See* Dowd, *supra* note 14, at 1063–1064; *see also* Kathleen Sylvester and Kathleen Reich, *Making Fathers Count, Assessing the Progress of Responsible Fatherhood Efforts,* SOCIAL POLICY ACTION NETWORK, *available at* http://www.aecf.org/upload/publicationfiles/making%20fathers%20 count.pdf 22 (2011).
22. *See* WILLIAM MARSIGLIO AND KEVIN ROY, NURTURING DADS: FATHERHOOD INITIATIVES BEYOND THE WALLET 4 (2012).
23. The connection between masculinity and militarism in Israel is especially salient due to the historical process which identified the Zionist Jew as masculine and as a fighter. The Zionist movement, which emerged in Europe during the nineteenth century, was aimed at creating the new Jew as masculine and a fighter. The movement wanted to change the image of the old

should also be a fighter.[25] That is, there is a direct link between serving in the army in combat units, willing to sacrifice your life for the country, and being regarded as a good citizen.[26] This social imperative does not go along with nurturing and softness so required in caring for children. There is a similar link in the U.S., as serving in the military "confers privilege, most notably, the notion of full citizenship because of the literal sacrifice of [men's] bodies."[27] However, whereas serving in the military is optional in the U.S. and regarded as only one route to being considered a good American citizen, it is mandatory in Israel[28] and provides *the* measurement for being regarded as a "real" Israeli. Thus, Israeli fathers might find nurturing as even more at odds with masculinity norms than their American counterparts, given the militaristic society they live in.

[B]   Located Within a Hierarchy

Another masculine trait that has a direct impact on the way Israeli and American men are involved in caregiving is hierarchy: both the hierarchies among men themselves and those of men on women.[29] The hegemonic masculine man in Israel manifests the prevalent hierarchies in the Israeli society: This man should be Jewish and white; he

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European Jew, who was perceived as weak and vulnerable, which made him an easy target for hatred and hostility. In contrast, the body of the new Jew was supposed to be tall and masculine, and he was expected to be assertive and self-confident. For more on the historical process of creating the masculine Jew, *see* Orna Sasson-Levi, *Masculinity as a Protest: Identity Construction Among Blue-Collar Soldiers,* 5(1) Israeli Sociology, A Journal of the Study of Society in Israel 17 (2003) [Hebrew]; Hollander, *supra* note 12, at 66; Danny Kaplan, *The Construction of Combat Emotions as a Central Site of "Sexonality,"* 5(1) Israeli Sociology, A Journal of the Study of Society in Israel 50 (2003) [Hebrew]; Yohai Hakak, *Who Is a Hero? Changes in the Construction of the Haredi Masculine Body due to the Interaction with the Secular Masculine Body,* 11(1) Israeli Sociology, A Journal of the Study of Society in Israel 163 (2009); Yair Seltenreich, *Masculinity, Respect and Body in the PJCA Settlements of the Galilee During the Settlement Period,* 11(1) Israeli Sociology, A Journal of the Study of Society in Israel 137–157 (2009).

24. The concept of "hegemonic masculinity" was coined by R.W. Connell, a leading theorist of masculinities. This form of masculinity is the socially preferred one in a given culture, however only a minority of men might actually enact it. *See* R.W. Connell and James W. Messerschmidt, *Hegemonic Masculinity: Rethinking the Concept*, 19 Gender & Soc'y 829, 832–833 (2005).

25. Not surprisingly, most of the studies that deal with Israeli masculinities have been focused on the military and its effects on Israeli men. *See* Danny Kaplan, *Introduction,* in R.W. Connell, Masculinities 16 (2009) [Hebrew]; *see also* Hollander, *supra* note 12, at 72.

26. *See* Hollander, *supra* note 12, at 54–55.

27. Dowd, The Man Question, *supra* note 4, at 58.

28. Serving in the army is mandatory in Israel for both men and women. A lot have been written and said about Israeli women's service in the military, and a full discussion of this complex issue is beyond the scope of this study. However, at the risk of diminishing the seriousness and depth of the issue, it is worth mentioning that the military is perceived as a masculine organization, and has a significant role in reinforcing gender roles in the Israeli society. *See,* e.g*.,* Noya Rimalt, *Women in the Sphere of Masculinity: The Double-Edged Sword of Women's Integration in the Military*, 14 Duke J. Gender L. & Pol'y 1097 (2007); Orna Sasson-Levy, *Constructing Gender Identities Within the Israeli Army* (2000) (unpublished Ph.D dissertation, Hebrew University) (on file with the Hebrew University Library) [Hebrew]; Sasson-Levi, *supra* note 23, at 54; Hollander, *supra* note 12, at 70–72.

29. *See* Dowd, *supra* note 14, at 1065–1066.

needs to belong to the upper-middle class; should be heterosexual; and not feminine.[30] Given that the hegemonic masculine man in the U.S. currently "is an elite Anglo white heterosexual male,"[31] there are many similarities between hegemonic masculinity in Israel and the U.S. However, "white supremacy" is defined differently in the two countries. In the U.S., race is the primary system of oppression in a way that often overshadows the patriarchal dividend.[32] American black men's subordinated status in the hierarchy of masculinities is reinforced due to a combination of gender, race, and class.[33] In Israel, however, the "black" man is distinguished not necessarily by his race but rather by his nationality or ethnicity.[34] In other words, men in Israel might inhabit a privileged gender category (i.e., men) and a subordinated ethnical category (i.e., Arab).[35] The military service establishes and reinforces hierarchies among men and its central role goes beyond the service itself and affects social, national, and educational aspects as well.[36] It is valued as a qualification for occupying political leadership in Israel as can be seen by the large number of generals in all Israeli cabinets throughout the years.[37] Similarly, serving in the U.S. military is also prized as a qualification for obtaining political positions as well as for receiving entitlements such as educational and health benefits.[38]

In order to maintain their place in the hierarchical order, men feel a constant pressure to prove their masculinity,[39] which strongly affects their level of involvement in caregiving. Indeed, research has shown that peer behavior has a major impact on fathers in both countries: When asked what might affect their level of engagement in caregiving, Israeli and American fathers said that in order for them to be more openly engaged as parents, other working fathers need to publicly exhibit their participation in parenting as well.[40] Along these lines, fathers find it difficult to co-parent in an equal

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30. *See* Hollander, *supra* note 12, at 78.
31. *See* MASCULINITIES AND THE LAW, *supra* note 4, at 87.
32. *Id.* at 30.
33. *Id.* at 92, and also at 85, and at 29; *see also* DOWD, THE MAN QUESTION, *supra* note 4, at 150.
34. Israel is a multi-ethnic society in a very complex manner, which can be divided into two main levels: the first division is between Jews and Arabs; the second division is between Jews from different origins – Ashkenazi v. Sephardi. "Mizrahim" or "Sephardim" are Jews of Middle Eastern, Central Asian, or North African descent. These divisions have an impact on class stratification as well, and Ashkenazi-Jews occupy the upper strata in society, whereas Sephardi-Jews occupy less desirable social positions, and Israeli-Arabs occupy the bottom strata. *See* Meir Yaish, *Class Structure in a Deeply Divided Society: Class and Ethnic Inequality in Israel, 1974–1991*, 52 THE BRITISH J. SOCIOLOGY 414 (2001).
35. Whereas in the American context, "men could be seen as inhabiting a privileged gender category (i.e., men) and a subordinated racial category (i.e., black)." *See* MASCULINITIES AND THE LAW, *supra* note 4, at 85.
36. *See* Hollander, *supra* note 12, at 71.
37. *Id.* at 39.
38. *See* DOWD, THE MAN QUESTION, *supra* note 4, at 58.
39. *See* MASCULINITIES AND THE LAW, *supra* note 4, at 3.
40. *See* Darren Rosenblum, *Unsex Mothering, Toward a New Culture of Parenting*, 35 HARV. J.L. & GENDER 110 (2012); *see also* Dror Gershoni, *New Fatherhood in Israel—A Gender Perspective on Masculinity and Fatherhood in the Institutional and Marital Context* 63 (2004) (unpublished M.A. Thesis, Dep't of Soc. & Anthro., Bar-Ilan University) (on file with the Bar-Ilan University Library) [Hebrew] (In his study of Israeli fathers, Gershoni's interviewees have said that in order for them to be more openly engaged in care, employers need to change their perceptions, and other working fathers need to publicly exhibit their participation in parenting). Peer behavior

and collaborative way with other men when there are multiple parents.[41] Multiple parents have become a common phenomenon due to the increase in divorce rates in both countries and the likelihood that one—or both—of the biological parents will re-marry or cohabit with other partners.[42] Since co-parenting requires collaboration and connection, the hierarchy norm of masculinities might undermine the possibility of a successful cooperation between the parents—the biological and non-biological ones—to the detriment of children.[43]

[C]   Being the Family Provider

Israeli and American fathers countries are expected to provide for their families economically and their ability—or inability thereof—to be breadwinners comes to define their identity as men.[44] The strong correlation between achieving success in the workplace and being regarded as masculine means that fathers' familial contribution is measured by money, not caregiving.[45]

While contemporaneously fathers in both countries are expected to be the primary breadwinners, American fathers were historically supposed to be the sole breadwinners, having homemaker-wives.[46] This is in contrast to their Israeli counter-parts, whose wives have always been expected to be *both* caregivers and employees, albeit to put nurture before paid work.[47] The role of Israeli women as both workers and caregivers was developed with the creation of the new state.[48] Women were expected

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has a greater effect on men than the behavior of their own fathers or their partners. *See* Dowd, The Man Question, *supra* note 4, at 112.

41. *See* Dowd, *supra* note 14, at 1065–1066.

42. *Id.* at 1066; In Israel, *see* Ayelet Blacher-Prigat and Daphne Hacker, *Parents or Strangers: Common and Desired Legal Status of Parent's Partners*, 40 Mishpatim 6–7 (2010) [Hebrew]; Hacker, *supra* note 15, at 411.

43. *See* Dowd, *supra* note 14, at 1066; *see also* Dowd, The Man Question, *supra* note 4, at 108 (arguing that "[m]ultiple fatherhood is not uncommon, but what appears to be uncommon is multiple nurturing fathers").

44. *See* Ifat Matzner-Heruti, *"Dare to Care": The Complicated Case of Working Fathers Alleging Sex and Parental Discrimination – A Comparative Analysis*, 23 J. L. & Policy 101 (2014).

45. *See* Abrams, *supra* note 20, at 759–760 (arguing that the social expectation of men to perform as "ideal workers" without family responsibilities arises from "more pervasive gender norms that link masculinity with the ability to perform as the family provider"); *see also* Making Men into Fathers, *supra* note 9, at 62 (arguing that "indeed, part of the very definition of proper masculinity, and good fatherhood, in the United States has been economic self-support"); Dowd, The Man Question, *supra* note 4, at 110; Ann C. McGinley, *Masculine Law Firms*, 8 FIU L. Rev. 423, 440 (2013); Shelley J. Correll, Erin L. Kelly, Lindsey Trimble O'Connor and Joan C. Williams, *Redesigning, Redefining Work*, 41(1) Work and Occupations 3, 4 (2014). With regard to the Israeli context, *see* Gershoni, *supra* note 40, at 60.

46. This is a generalization and does not reflect the lives of women of color and working-class women who have always worked outside their homes. *See* Martha Chamallas, Introduction to Feminist Legal Theory 25 (2003).

47. Michal Frenkel, *Has the Motherhood Wall Collapsed? Work Family Strategies of Hi- Tech Women in Israel,* The Israeli Women's Network Publication Series 11–12 (2003).

48. *See* Dafna N. Izraeli, *The Women Workers' Movement: First Wave Feminism in Pre-State Israel*, in Pioneers and Homemakers: Jewish Women in Pre-State Israel 183–209 (Deborah Bernstein ed., 1992); *see also* Mordehai (Moti) Mironi, *Work, Family, and the Law in Israel*, 27 Comp. Lab. L. & Pol'y J. 487, 489 (2006).

to give birth[49] and care for children, but also to take part in the labor market. However, their financial contribution was supposed to provide only the second income.[50] Thus, Israeli families comprised of a father as a sole breadwinner and a mother as a sole homemaker were always an exception,[51] and there was a low legitimacy for mothers whose "only" job was to raise their children.[52] Consequently, employment laws were enacted to provide working mothers with entitlements in order for them to combine work and family, such as the Employment of Women Law.[53] This law, enacted as early as 1954, established certain rights to be given to working mothers, such as paid maternity leave.[54] Aside from paid maternity leave, Israeli working mothers are entitled to certain arrangements aiming at allowing them to combine their work and family duties.[55]

By comparison, American mothers were historically expected to solely take care of the children and the home, while their husbands were supposed to be the economic providers, earning wages capable of singularly supporting the family.[56] As Professor Catherine Albiston explains, this family wage ideology came as a response "to the changing economic system brought about by industrialization and the upheavals that threatened male exclusive competence and authority in the economic realm."[57] During this process, separate spheres of responsibility were established: Women were identified with the private sphere of the home and with task-oriented labor, whereas men were identified with the public sphere outside the home and with time-disciplined labor.[58] This gender division of labor led to far-reaching consequences, changing the value and importance of work. Working full time for wages in the industrial economy meant independence and citizenship whereas working part time or working at home meant dependency.[59] The changing norms, therefore, were to define what work actually is.[60] Yet, the American workforce has undergone dramatic changes in the last

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49. *See* Mironi, *supra* note 48, at 487–488 (arguing that "demography and birth rate have become an issue of national security" in Israel); *see also* Frenkel, *supra* note 47, at 11.

50. *See* Hollander, *supra* note 12, at 77–78.

51. *See* Hacker, *supra* note 15, at 411.

52. *See* Frenkel, *supra* note 47, at 11–12; *see also* Peretz, *supra* note 14, at 272.

53. Employment of Women Law, 1954 S.H. 154.

54. *Id.* § 6. The law mandates that a woman must be employed in order to be eligible for paid maternity leave which demonstrates Israel's encouragement of women to work outside their homes. Women who work in their own homes are not considered workers hence they are not entitled to a maternity allowance (or unemployment pay). *See* RUTH HALPERIN-KADDARI, WOMEN IN ISRAEL: A STATE OF THEIR OWN 124 (2004).

55. For example, they might be entitled to a shortened workday; they have the right to use the services of an on-site employer-provided day care center (in case there is one); they have the right to take up to eight days of paid leave per year to take care of a sick child. *See* Employment Equal Opportunities Law, 5748-1988, §4.

56. *See* Catherine Albiston, *Institutional Inequality*, WIS. L. REV. 1093, 1118–1119 (2009). Yet, as Martha Chamallas expressed, women of color and working-class women have always worked outside their homes. *See supra* fn. 46.

57. *See* Albiston, *supra* note 56, at 1118.

58. *Id.*

59. *Id.* at 1111.

60. *Id.* at 1111–1112.

half of the twentieth century when many women entered it,[61] and the majority of families nowadays include dual-earner couples.[62] Moreover, the American family's construction has also changed, and there are more and more single-parent families due to increases in both the divorce rate and the number of never-married parents.[63] Nevertheless, despite these changes, the family wage ideal is still a powerful norm[64] requiring fathers to be the main breadwinners.[65] By the same token, women still suffer the "motherhood penalty,"[66] which is reflected in the difficulties they face when trying to combine work and familial responsibilities.[67]

To sum up, the value of understanding masculinities' core insights is to bring a much richer picture of male privilege,[68] and expose the gender "policing" of men and fathers. Such "policing" includes the demand of men to avoid acting in a "feminine" and soft way; the importance of hierarchy to manhood, which pressures men to constantly prove their manliness; and the breadwinner norm. Fathers' role in Israel and in the U.S. was historically constructed around economic responsibility, and they were expected to function as the primary breadwinners (in Israel) or sole breadwinners (in the U.S.). Changes in the American workforce have led to an erosion of the breadwinner/homemaker household model. Yet, American fathers are still required to be the primary providers, and they consequently perceive breadwinning as their main role as husbands and parents.[69] Their Israeli counterparts are also expected to function as the main providers, and, at most, "help" their wives with childrearing and household chores.[70] Thus, in both countries, fathers' role as nurturers is regarded as voluntary and optional, not as part of their identity as men,[71] and consequently they are often seen as secondary and even incompetent parents.[72]

In the next part, I would like to demonstrate how the elements of masculinities analyzed above are reinforced by Israeli and American governments, workplaces and

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61. *See* Catherine Albiston, *Institutional Perspectives on Law, Work, and Family*, 3 Annu. Rev. Law Soc. Sci. 397, 399 (2007); *see also* Janet C. Gornick and Marcia K. Meyers, Families that Work: Policies for Reconciling Parenthood and Employment 7 (2003); Haya Stier and Avital Sella-Dotan, *Work-Family Balance in the Era of Intensive Work*, in Heavy work investment: Its nature, sources, outcomes, and future directions 225 (Harpaz and Snir ed., 2014).

62. *See* http://taxfoundation.org/blog/america-has-become-nation-dual-income-working-couples.

63. *See* Albiston, *supra* note 61, at 400; *see also* Stier and Sella-Dotan, *supra* note 61, at 225.

64. *See* Laura T. Kessler, *Transgressive Caregiving*, 33 Fla. St. U. L. Rev. 45 (2005).

65. *See* Albiston, *supra* note 56, at 1152; *see also* Abrams, *supra* note 20, at 759–760.

66. Shelley J. Correll et al., *Getting a Job: Is There a Motherhood Penalty?* 112 Am. J. Soc. 1297, 1298, 1334 (2007).

67. *Id.* (arguing that "employed mothers are the group of women that now accounts for most of the 'gender gap' in wages"); *see also* Joan C. Williams and Nancy Segal, *Beyond The Maternal Wall: Relief For Family Caregivers Who Are Discriminated Against On The Job*, 26 Harv. Women's L. J. 77 (2003).

68. *See* Masculinities and the Law, *supra* note 4, at 30; *see also* Douglas P. Schrock and Michael Schwalbe, *Men, Masculinity, and Manhood Acts,* Annual Review of Sociology, 277, 288–289 (2009).

69. *See supra* section §9.01[C].

70. *See* Hollander, *supra* note 12, at 77–78.

71. *See* Matzner-Heruti, *supra* note 44, at 161; *see also* Dowd, *supra* note 14, at 1061–1062; Daphna Hacker, Parenthood and the Law, Custody and Visitation Construction upon Divorce 77–150 (2008) [Hebrew].

72. *See* Dowd, The Man Question, *supra* note 4, at 120.

courts. Specifically, I will examine how the ideal worker model infuses the breadwinner norm in a way which generates significant difficulties for working fathers to be involved caregivers.

§9.03   THE ROLE OF THE ISRAELI AND AMERICAN GOVERNMENTS, EMPLOYERS, AND COURTS IN THE REINFORCEMENT OF THE MASCULINE BREADWINNER NORM

The previous part has shown that masculinities imperatives shape Israeli and American men's understanding with regard to their paternal role and obligations as fathers: The cornerstone of these obligations is to care for their families financially which essentially means that fathers should be primarily committed to market work.

Work-family policies in both countries intensify fathers' primary commitment to the workplace, albeit differently, depending upon each country's culture, tradition and history, to name but a few.

To begin with, while both counties can be classified as liberal welfare states[73] with common law systems, they differ in the level of their governments' interference. The Israeli state was founded on social-democratic values, including a strong emphasis on governmental intervention in the social and economic spheres.[74] By comparison, the American state's emphasis has been focused on ideals of self-sufficiency with minimal governmental interference,[75] and there is a strong reliance on employer-based benefits.[76] Americans must secure their wages from the market, and provide care for their families—rather than the state.[77] Such assumption has a significant impact on men, as astutely asserted by Orloff and Monson:

> The emphasis ideologically and materially on private sources of welfare—both cash and care—has been consequential for gender relations, and men's positions. The strong emphasis on private responsibility for all but the aged means that

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73. *See* Hila Shamir, *The State of Care: Rethinking the Distributive Effects of Familial Care Policies in Liberal Welfare States,* Am. J. Comp. L. 953, 960 (2010) (characterizing Israel and the U.S. as liberal welfare states based on the typology of Gosta Esping-Andresen: Gösta Esping-Andersen, *The Three Worlds of Welfare Capitalism* (1990)).

74. *See* Avraham Doron, *Is a Balanced Attitude towards the Welfare State Possible?* 12 Labor, Society and State 516 (2010) [Hebrew] (contending that from the 1930s to the end of the 1970s, the hegemony of the labor movement, as well as its belief in a social-democratic regime, including strong interferences in social and economic life, was dominant in Israel. However, since the 1980s, the Israeli society has been in the process of leaning towards the radical-right in many spheres, including the socio-economic). Interestingly, Israeli society is influenced by the U.S. and is turning away from ideals of social solidarity to ideals of individualism and worshiping personal economic success. *Id.* at 528 (arguing that Israel, as a post-industrial society, is undergoing a profound cultural change). The salient change could be seen in its departure from historical ideals of social solidarity and equality to ideals of individualism and personal economic success); *see also* Peretz, *supra* note 14, at 272 (arguing that the Israeli welfare state is going through major changes in terms of moving away from a social-democratic welfare policy to a neo-liberal policy); Hacker et al., *supra* note 6, at 686–687.

75. *See* Lisa Bornstein, *Inclusions and Exclusions in Work-Family Policy: The Public Values and Moral Code Embedded in the Family and Medical Leave Act*, Colum. J. Gender & L. 10, 77 (2000).

76. *See* Albiston, *supra* note 56, at 1105.

77. *See* Making Men into Fathers, *supra* note 9, at 62–64.

men's identities—as fathers, citizens, workers—are not forged within the welfare state, but outside it, or even in opposition to it.[78]

Israel and the U.S. thus differ as to the level of legal and public support provided for families. For instance, the Israeli antidiscrimination provision defines parents as a protected group in the workplace,[79] whereas its American antidiscrimination counterpart lacks such protection.[80] In addition, the U.S. government provides almost no direct support for families,[81] including paid family leave.[82] The Israeli law, in comparison, provides paid family leave on the occasions of birth or adoption of a baby.[83] Moreover, Israeli parents might be allowed to work shortened days, depending upon their workplace's policy.[84] To be clear, not all of the Israeli mandates are framed in a

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78. *See* MAKING MEN INTO FATHERS, *supra* note 9, at 89.

79. Employment (Equal Opportunities) Law, 5748-1988, SH No. 38, § 2(a) [hereinafter EEO Law].

80. Civil Rights Act of 1964, 42 U.S.C. § 2000e-2 (1964). Title VII of the Civil Rights Act of 1964 was enacted to prohibit discrimination against employees in the workplace. Title VII provides: "[i]t shall be an unlawful employment practice for an employer . . . to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, [and] national origin." *Id.* § 2000e-2(a)(1). A few states have specific prohibitions in their employment discrimination protections based on family responsibilities. In Alaska, for example, the statute prohibits discrimination based on "parenthood," *inter alia*. *See* Alaska Stat. § 18.80.200 (2006). In the District of Columbia, an employer cannot discriminate against an employee based on "family responsibilities". *See* D.C. Code Ann. § 2-1402.11 (2001). There are sixty-three local jurisdictions in twenty-two states in addition to Alaska and the District of Columbia that prohibit this type of discrimination. *See* Stephanie Bornstein and Robert J. Rathmell, *Caregivers as a Protected Class?: The Growth of State and Local Laws Prohibiting Family Responsibilities Discrimination*, CTR. FOR WORKLIFE LAW, U.C. HASTINGS COLL. OF L. 1, 1 (2009), http://www.worklifelaw.org/pubs/LocalFRDLawsReport.pdf.

81. *See* GORNICK AND MEYERS, *supra* note 61, at 107; *see also* MARTHA A. FINEMAN, THE AUTONOMY MYTH: A THEORY OF DEPENDENCY 14 (2004); MAKING MEN INTO FATHERS, *supra* note 9, at 30; Bornstein, *supra* note 75, at 77 (contending that "[t]he United States has done little to help working families. We lack any comprehensive national policy."); Lori Jablczynski, Note, *Striking a Balance Between the "Parental" Wall and Workplace Equality: The Male Caregiver Perspective,* 31 WOMEN'S RTS. L. REP. 309, 313 (2010) (arguing that "America still lacks adequate social backing for caregivers and their familial obligations."); Nancy E. Dowd, *Work and Family: Restructuring the Workplace*, 32 ARIZ. L. REV. 431, 469 (1990) (asserting that "[t]he primary role of the law in the work-family relationship has been non-intervention…") On the importance of supportive policies, and the lack of such ones in the U.S., *see* JANE WALDFOGEL, *WHAT CHILDREN NEED* (2006).

82. Family and Medical Leave Act of 1993, 29 U.S.C. §§ 2601–2654 (1994) In order to be eligible for the leave, the worker must have worked for at least twelve months prior to taking the leave, and for at least 1,250 hours during these months. Further, the worker must be part of a workplace where there are more than fifty employees within seventy-five miles. *Id.* at §101(2)(A)(ii). The U.S. is the only country in the developed world that does not provide paid parental leave. *See* Rosenblum, *supra* note 40, at 104; *see also* GORNICK AND MARCIA, *supra* note 61, at 123 (2003). Four states, however, provide paid family leave. *See* http://www.nolo.com/legal-encyclopedia/paid-family-leave-states-29854.html (last visited 03.09.2016). Other states are considering leave legislation as well. *See* Caldwell G. Collins, *Note: Home Alone: Is This the Best We Can Do? A Proposal to Amend Pending Parental Leave Legislation*, 29 WASH. U. J.L. & POL'Y 301, 310–312 (2009).

83. Employment of Women Law, 1954 S.H. 154, § 6. Israeli laws also include paid leave to care for a sick child, sick parent or sick spouse: *see*, respectively, Sick Pay (Absence from Work Due to Child's Illness) 1993, Sick Leave Law (Leave Due to a Parent's Illness) 1993, Sick Leave Law (Leave Due to a Spouse's Illness) 1998. Moreover, employees are entitled to a paid leave in cases of their own health problems. *See* Sick Leave Law 1976.

84. EEO Law § 4(a) states that "[w]here, in accordance with the terms of employment customary at her place of work, a woman employee has any entitlement by virtue of her being a parent, such

gender-neutral stance; some of them state that only if the mother cannot use the benefit can the father, under some conditions, assume the role of a caregiver.[85] This unequal distribution manifests Israel's view of fathers as secondary caregivers who have a residual role as nurturers.

Not only are legal mandates—or lack of them thereof—convey to fathers the message that they are secondary caregivers, but also workplaces. The ideal worker norm is prevalent in both countries—good and devoted workers are considered to be those who dedicate most of their time and energy to their employers, without taking time-off for family (or other) responsibilities.[86] In fact, employees in both countries are measured according to the time they spend at work, and not surprisingly, they work more hours than their counterparts in other industrialized countries.[87] While the increase in working hours mainly affects professionals and managers,[88] more and more professions have also begun to require longer working days.[89] The requirement to stay long hours at work forces workers to devote most of their time and energy to work, perpetuating the breadwinner model and maintaining a workforce committed to putting work first in a way that also serves the whole capitalist system.[90] Even when Israeli and American fathers expressed equal views regarding caregiving, the daily stress at work along with fear of being unemployed, especially at times of recession, reinforce gendered order and hegemonic masculinity.[91] Therefore, fathers feel a major responsibility to succeed at work, in a workforce which is becoming more and more demanding and competitive. In this way, gender norms of masculinities nourish the breadwinner norm, signaling to fathers that by being the family providers they are

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entitlement shall also be accorded to a male employee at the workplace where the aforesaid term of employment is customary ... ."

85. *See* Matzner-Heruti, *supra* note 44, at 116–118 (analyzing section 4 of the EEO Law and its gendered eligibility requirements); *see also* Ifat Matzner-Heruti, *All You Need Is Leave? Rethinking the Concept of Paternity Leave*, 21 Cardozo J.L. & Gender 475 (2014).

86. *See* Joan Williams and H.C. Cooper, *The Public Policy of Motherhood*, 60 J. Soc. Issues 849 (2004); *see also* Williams and Segal, *supra* note 67, at 114. In Israel, *see* Hacker and Frenkel, *supra* note 14, at 278*; see also* Hacker et al., *supra* note 6, at 682–684.

87. *See* Gornick and Meyers, *supra* note 61, at 59; *see also* Jerry A. Jacobs and Kathleen Gerson, *Toward a Family-Friendly, Gender-Equitable Work Week*, 1 U. Pa. J. Lab. & Emp. L. 457, 458 (1997–1998); Williams and Cooper, *supra* note 86, at 852; Williams, Reshaping, *supra* note 16, at 90; Belinda M. Smith, *Time Norms in the Workplace: Their Exclusionary Effect and Potential for Change*, 11 Colum. J. Gender & L. 271 (2002); Rosenblum, *supra* note 40, at 107; Williams and Segal, *supra* note 67, at 114. In comparison, the law in Israel defines the work-week in Israel as forty-three hours a week, however, in practice many workplaces demand their workers to work more hours. *See* Renan-Barzilay, *supra* note 14, at 327; *see also* Hacker and Frenkel, *supra* note 14, at 278; Hacker et al. *supra* note 6, at 704–705; and also http://www.haaretz.com/print-edition/news/experts-israelis-among-most-overworked-people-in world1.270790;http://www.ynet.co.il/articles/0,7340,L3760210,00.html [Hebrew] (asserting that many Israelis work sixty hours a week or more).

88. *See* Smith, *supra* note 87, at 277; *see also* Williams, Reshaping, *supra* note 16, at 90. In Israel, *see* Renan-Barzilay, *supra* note 14, at 327.

89. *See* Erin L. Kelly, *Discrimination Against Caregivers? Gendered Family Responsibilities, Employer Practices, and Work Rewards*, in Handbook of Employment Discrimination Research: Rights and Realities 341, 350 (Laura Beth Nielsen and Robert Nelson eds., 2005); *see also* Smith, *supra* note 87, at 277. In Israel, *see* Renan-Barzilay, *supra* note 14, at 327.

90. *See* Abrams, *supra* note 20, at 760; *see also* Dowd, *supra* note 14, at 1061.

91. In Israel, *See* Gershoni, *supra* note 40, at 72–73. In the U.S., *see* Williams and Tait, *supra* note 16.

regarded as masculine men.[92] As manifested in the words of an Israeli father who equally shares caregiving and household duties with his wife:

> From my experience, and from the experience of my friends, the desire to put the family first – and not just pay lip service – clashes with things that are perceived as very masculine. What will you tell yourself, or your neighbors? That you were an amazing father?[93]

His American counterpart similarly connects working and being masculine by asserting: "As a man you have no status at all if you do not work."[94] Indeed, voluminous studies have shown that workplaces—both in Israel and in the U.S.—often penalize working fathers who "dare" to be more engaged and active as parents.[95] What is more, the studies demonstrate the Gordian knot between masculinity and breadwinning, showing that Israeli and American fathers who deviate from their traditional roles not only jeopardize their work status but also their manly façade.[96] Therefore, many Israeli fathers have come to accept and even justify workplace requirements to dedicate many hours to work, worrying that if they do not, they might lose their jobs.[97] Yet, the research has documented another phenomenon: in order to avoid the penalties of noncompliance but still be able to fulfill familial responsibilities, American fathers have found several strategies to cope with their conflicting demands. For instance, some use informal, under-the-radar flexibility, which means being secretive about their engagement in work-family related activities.[98] While this kind of strategy enables fathers to maintain their ideal worker façade, it does not help transform the organizational culture into a supportive one for fathers (and other caregivers).[99] It is worth mentioning the experience of divorced fathers who need to recalibrate their working schedules to meet their children's needs in the absence of a mother. According to a recent study conducted in Israel, divorced fathers adopt various work-family strategies, including flexible work arrangements, setting new expectations with supervisors, and

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92. *See* Chuck Halverson, *Notes, From Here to Paternity: Why Men Are Not Taking Leave Under the Family and Medical Leave Act*, 18 Wis. Women's L.J. 257, 263 (2003); *see also* Dowd, *supra* note 14, at 1061–1062; Williams and Tait, *supra* note 16, at 864.

93. *See* Naomi Darom, *Israeli Fathers Who Want it All: But Can They Get a Job After Being Stay-at-Home Dads?*, Haaretz (May 18, 2013, 1:50 PM), http://www.haaretz.com/weekend/magazine/israeli-fathers-who-want-it-all-but-can-they-get-a-job-after-being-stay-at-home-dads.premium-1.524313.

94. *See* Andrea Doucet, *"It's Almost Like I Have a Job, But I Don't Get Paid": Fathers at Home Reconfiguring Work, Care, and Masculinity*, 2 FATHERING 277, 278 (2004).

95. *See* Matzner-Heruti, *supra* note 85, at 482–484.

96. *Id.*

97. *See* Gershoni, *supra* note 40, at 60, 72–74.

98. *See* Jamie J. Ladge, Beth K. Humberd, Brad Harringtin and Marla Baskerville Watkins, *Updating the Organization Man: An Examination of Involved Fathering in the Workplace*, The Academy of Management Perspectives 29 (2014); *see also* Joan C. Williams, Mary Blair-Loy, and Jennifer L. Berdahl, *Cultural Schemas, Social Class, and the Flexibility Stigma*, 69(2) J. Soc. Issues 209, 221 (2013); Erin Reid, *Why Some Men Pretend to Work 80-Hour Weeks*, Harvard Business Review (April 28, 2015), https://hbr.org/2015/04/why-some-men-pretend-to-work-80-hour-weeks&cm_sp = Article-_-Links-_-End%20of%20Page%20Recirculation (showing that by using creative ways to balance work and life, men were able to "pass" as ideal workers and at the same time work less than other men who did not use such ways).

99. *See* Ladge et al., *supra* note 98, at 29.

working shorter days.[100] The study also showed that divorced fathers are able to combine work and family better than married fathers due to employers' and colleagues' supportiveness.[101] While married fathers are expected to have a wife who is responsible for childrearing, divorced fathers lack such an "in-house caregiver" and thus their familial duties receive support at work.

The above analysis shows that workplaces affect the kinds of strategies workers pursue to combine work and family, emphasizing workplaces' compelling power to encourage or discourage men from fulfilling caregiving duties. Clearly, a supportive atmosphere toward male caregivers within the organization is critical for their real ability to combine work and family, as will be further elaborated below.[102]

Having encountered an unsupportive environment and workplace discrimination has led several Israeli and American fathers to sue their employers. Yet these fathers, as well as other plaintiffs who try to challenge workplace norms, often find little solace in courts. For the most part, courts in Israel as well as in the U.S. have been reluctant to challenge or criticize well-engrained structural norms and practices. An example of the Israeli courts' attitude can be found in the Supreme Court's refusal to hear a case in which the plaintiff, an investigator in the Israeli police, was required to attend a fourteen-week course far from her home.[103] Because this course was to begin a few months after she had had a baby, she refused to participate in it, arguing that the course's conditions constitute discrimination against parents, mainly mothers. She further claimed that this course could be operated under other conditions that would not require her to leave her home.[104] This case had the potential of questioning and challenging work practices that were not compatible with parents' obligations. However, rather than investigating whether those practices can be done in other, more accommodating ways, the Supreme Court chose not to decide it.[105] By failing to provide legal protection for caregivers, the court gave the employer unfettered discretion to its seemingly gender-neutral policy that essentially places a burden on caregivers.

Whereas the Supreme Court's reinforcement of total working norms is expressed in its reluctance to decide the case, a similar view of accepting—indeed strengthening—the ideal worker model is manifested in several cases decided by the Israeli regional and national labor courts.[106] Interestingly, these cases were brought to courts by fathers who asked to get benefits similar to their female colleagues. Specifically, the plaintiffs asked to work shortened days, arguing that it is a benefit

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100. Laliv Cohen-Israeli and Larissa Remennick, "*As a Divorcee, I Am a Better Father*": *Work and Parenting among Divorced Men in Israel,* 56.7 *Journal of Divorce & Remarriage* 535 (2015).
101. Laliv Cohen-Israeli, *Care and Career*, 13(3) FATHERING 215 (2015).
102. *See infra* section §9.04.
103. *See* Hacker and Frenkel, *supra* note 14, at 275–278; *see also* Hacker et al. *supra* note 6, at 706.
104. *See* Hacker and Frenkel, *supra* note 14, at 275–278.
105. The judges suggested that the plaintiff withdraw the plea. *Id.*
106. For an in-depth analysis of cases brought to labor courts by Israeli fathers who argued they were discriminated against at work due to their sex and parental status, *see* Ifat Matzner-Heruti, *"Daddy's gone to work, he'll return when the moon comes out": An Examination of Policies for Reconciling Fatherhood and Employment*, 6 MA'ASEI MISHPAT 67 (2014) [Hebrew]; *see also* Matzner-Heruti, *supra* note 44.

conferred to working mothers and thus should apply to them as well.[107] The regional labor courts ruled in favor of the plaintiff fathers, and the National Labor court reaffirmed.[108] Ironically, while these decisions might seem as undermining the ideal worker norm, they are actually reinforcing it: The rational of the courts was that enabling fathers to work an hour less would enable mothers to work more hours.[109] The courts encourage mothers to work like ideal workers in order for them to be equal to men in the workplace.

The courts reiterated this rational in other decisions as well. For example, in deciding whether working fathers are entitled to monetary benefits the same as their female colleagues, the judges ruled against the fathers.[110] Working fathers, decided the courts, do not need incentives to stay long hours at work whereas mothers do:

[T]he essence of the monetary benefit as "mother's prerogative" is to encourage working mothers to stay at work for long hours in order to fulfill job demands. In this way of promoting mother-teachers' status and salary, the goal of establishing substantive equality between mother-teachers and father-teachers is achieved.[111]

The courts' focus on hours is unclear and disturbing because these cases dealt with teachers—a profession in which the number of hours worked is not and should not be the measure for evaluation.

The Israeli Courts' tendency to reinforce the long working hour days is also manifested in cases interpreting the Hours of Work and Rest Law.[112] This law, legislated in 1951, regulates working times and states that a working week will be comprised of forty-five hours (later reduced to forty-three hours).[113] Whenever workers are asked to work beyond these hours, they will be compensated with overtime pay.[114] However, the law includes a list of employees who are excluded from it, such as policemen, sailors and members of an air-crew.[115] Aside from these specific occupations, there are other two groups of workers excluded: employees who fulfill duties that require "a special degree of personal confidence,"[116] and employees whose work conditions and circumstances make it "impossible for the employer to control their working hours and hours of rest."[117] Those who are excluded are entitled to a global payment, regardless of the hours they work. Throughout the years, more and more positions have been excluded from the law by employers who employed their workers for many hours without paying them overtime.[118] Indeed, most of the cases brought to courts involved the question of whether the law should have been applied

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107. *See* Matzner-Heruti, *supra* note 44, at 118–119.

108. *Id.* at 119–120.

109. *Id.* at 119–126.

110. *Id.* at 126–129.

111. National Labor Court [NLC] 547/08 Medinat Israel v. Levi Shlomo [*State of Israel v. Levi*] (February 27, 2013), Nevo Legal Database (by subscription) § 57.

112. Hours of Work and Rest Law, 5711–1951.

113. *Id.* § 3.

114. *Id.* § 16.

115. *Id.* § 30(a)(1)-(4).

116. *Id.* § 30(a)(5).

117. *Id.* § 30(a)(6).

118. *See* Hacker et al., *supra* note 6, at 704.

and the employee had to receive the overtime pay or alternatively, the employee's position rightly fell within the exceptions.[119] When deciding these cases, however, the courts never inquired whether or not the employers' demand to work overtime is at all justified or whether such a practice is even economically rational.[120] Instead, according to the courts' neo-liberal approach, it is totally fine to require someone to work overtime as long as they get paid for it.[121]

American courts have also been reluctant to challenge existing practices of full-time work, inflexible schedules and no-leave policies.[122] Since work practices have become so well entrenched, courts regard them as natural and normal, taking them for granted as necessary for businesses without either seeing them as a form of gendered social organization, or challenging their necessity.[123] In her article, Nicole Porter uses jurisprudence under the Americans with Disabilities Act (ADA), showing that courts reaffirm employers' refusal to modify workplace structural time norms for employees with disabilities.[124] Claiming that such time norms are essential functions of the job and thus cannot be modified has been employers' main argument, and courts usually accepted it.[125] Analyzing ADA cases and demonstrating that courts have been reluctant to challenge or criticize workplace norms as unfitting to workers with disabilities has led Porter to the conclusion that litigation might not be the most effective strategy to solve work-family conflicts.[126] Indeed, scholars and advocates have been debating whether or not litigation involving Title VII has the ability to change workplace norms.[127] The most persuasive critique doubts Title VII's ability to re-examine and change the structure and norms of the workplace in such a way as to enable caregivers to take family leave and have flexible work arrangements.[128] As data show, plaintiffs who usually succeed in persuading the courts that they have been discriminated against due to their sex were those who worked like ideal workers and wanted to continue to work as ones without challenging time norms.[129] This is probably what led Ariel Ayanna's lawyers to use the illogical claim that he was able to be both an ideal

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119. *See* Sharon Aharoni-Goldenberg, *Unpaid Overtime – Implications and Proposals for Change*, 13 LABOR, SOCIETY AND LAW 236–237 (2013).

120. *See* Hacker et al., *supra* note 6, at 705–706.

121. *Id.* at 706.

122. *See* Albiston, *supra* note 61, at 414; *see also* Nicole B. Porter, Caregiver Conundrum Redux: *The Entrenchment of Structural Norms,* 91(4) Denv. UL. Rev. 963, 972 (2013).

123. *See* Albiston, *supra* note 61, at 413–414; *see also* Porter, *supra* note 122, at 986–987.

124. *See* Porter, *supra* note 122, at 981–986.

125. *Id.* at 982.

126. *Id.* at 986–989.

127. *Id. See also* Michelle A. Travis, *Recapturing the Transformative Potential of Employment Discrimination Law,* 62 WASH. & LEE 1. REV 7 (2005).

128. This is due to the current problems facing lawyers when using the claim of disparate treatment theory and also because of the way courts have examined disparate impact theory with regard to work practices. *See* Porter, *supra* note 122, at 986–987; *see also* Albiston, *supra* note 56, at 1136–1151.

129. *See* Albiston, *supra* note 61, at 413–414; *see also* Albiston, *supra* note 56, at 1153-1154; Kelly, *supra* note 89, at 356; Porter, *supra* note 122, at 972–973.

worker and an involved caregiver.[130] Ayanna, a male lawyer, had worked for a private law firm that adhered to the billable hour system,[131] according to which employees are measured by the hours they put in: the more hours the better. Knowing that challenging the billable hour system would probably be futile, he claimed that he was in fact able to meet the job requirements but nevertheless was discriminated against and eventually unlawfully fired due to his sex and his fulfillment of caregiving duties: Ayanna's caregiving responsibilities never detracted from his fulfilling the requirements of his position at Dechert. Ayanna regularly was at the office until 7:00, 8:00, 9:00 p.m. or even later, and he often worked late into the night from home. He never missed a deadline and was never unavailable even if he was not physically in the office.[132]

What is more, Ayanna claimed that the firm had a "macho" culture and its message to the male associates and partners was clear: familial responsibilities are not a man's role.[133] Arguing against the firm's "machismo" culture and at the same time claiming that he adhered to it essentially strengthens such culture of working very long hours without being involved as a parent. Ultimately, the court issued an order in the firm's motion for summary judgment,[134] dismissing Ayanna's claim of disparate treatment sex discrimination.[135]

To sum up this part, current policies and norms both in Israel and in the U.S. strengthen the ideal worker requirement and expect men and fathers to fulfill it, making care an economic responsibility at the expense of an emotional one.[136] Israeli laws provide some support for parents, yet differentiate between mothers' and fathers' eligibility, locating fathers as secondary caregivers. The American state, in comparison, lacks even the minimal accommodation of paid sick leave and parental leave, as well as a federal antidiscrimination law protecting caregivers. Lack of public support creates a heavy burden on fathers to financially provide for the family.[137] In other words, the role of a breadwinner in the current U.S. economy "fails to incorporate nurture, sacrificing nurture for gender-defined economic responsibility."[138]

With regard to working hours, many workplaces both in Israel and in the U.S. expect their employees to fulfill face-time full-time and even overtime requirements which leave almost no time for other activities besides work. Yet, when plaintiffs try to challenge these requirements, courts in both countries are reluctant to restrain

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130. Complaint and Jury Demand, Ayanna v. Dechert, LLP, 914 F. Supp. 2d 51 (D. Mass. 2012) No. 110-CV-12155, 2010 WL 5344371. For a detailed analysis of this case, *see* Matzner-Heruti, *supra* note 44, at 145–157.
131. *See* Complaint and Jury Demand, *supra* note 130, at para. 52.
132. *Id.* para. 66.
133. *Id.* para. 11.
134. *Ayanna*, 914 F. Supp. 2d at 53.
135. *Id.* at 57.
136. *See* Dowd, *supra* note 14, at 1057–1058.
137. *See* MAKING MEN INTO FATHERS, *supra* note 9, at 61; also at 62; s*ee also* MARSIGLIO AND ROY, *supra* note 22.
138. *See* Nancy E. Dowd, *Fathers and the Supreme Court: Founding Fathers and Nurturing Fathers*, 54 EMORY L.J. 1271, 1321 (2005).

employers' time demands, thus help to reinforce work and caregiving as mutually exclusive.

After analyzing the strengthening of the ideal worker norm by state laws (or lack of laws), workplaces and courts, in the next part I would like to deconstruct this norm by using masculinities theory. I contend that the assumption that the always-available ideal worker norm privileges men and fathers and discriminates "only" against women and mothers is a major reason for its pervasiveness. This is also why work-family policies have had little success thus far in achieving gender equality in the home and in the workplace.

§9.04   DECONSTRUCTING THE IDEAL WORKER NORM

Masculinities theory's main purpose is to interrogate how men, as gendered subjects, are situated in relation to a certain policy since such interrogation enriches discussions of equality and subordination.[139] Evidently, in much of the scholarship about gender equality in the workplace, men have been depicted as privileged and as those who are not affected by the conflict between home and work.[140] According to the prevalent theme in this scholarship, the workplace has been historically constructed by and for men, because they could work long hours outside their homes since their wives took care of the domestic duties, namely the household and care for the family members.[141] Consequently, the theme goes, the contemporary ideal worker norm that requires employees to take no time-off for caregiving fits men's lives, and therefore, constitutes gender discrimination against women and mothers.[142]

While this theme demonstrates an important aspect of the difficulties and discrimination women and mothers have endured at work, it lacks a crucial aspect: being required to be an ideal worker is not necessarily a privilege for all men, as men are not a one-dimensional group. Analyzing the ideal worker model with the usage of masculinities theory helps to shed light on the complex and multidimensional aspects of this model in a way that will ultimately lead to its revision and modification.

First, the assumption that men benefit from the workplace structure is essentializing as it assumes that all men benefit from the prevalent rigid and inflexible workplace norms of working many hours. Yet, such an assumption ignores hierarchies

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139. *See* Dowd, *supra* note 4, at 204; *see also* MASCULINITIES AND THE LAW, *supra* note 4, at 4.
140. *See,* e.g*.,* Laura T. Kessler, *Transgressive Caregiving*, 33 FLA. ST. U. L. Rev. 10 (2005); *see also* BRAD HARRINGTON ET AL., THE NEW DAD: CARING, COMMITTED AND CONFLICTED 36 (2011), *available at* http://www.bc.edu/content/dam/files/centers/cwf/pdf/FH-Study-Web-2.pdf; MAKING MEN INTO FATHERS, *supra* note 9, at 26; Kelli K. Garcia, *The Gender Bind: Men as Inauthentic Caregivers*, 20 DUKE J. GENDER L. & POL'Y 1, 1–2 (2012). In Israel, *see* Haya Stier, *The Inter-Relations Between Work for Pay and Family Work*, 7 SOTSILOGIA YISRAELIT [ISRAELI SOCIOL-OGY] 143, 146 (2005) [Hebrew] (arguing that while there is a vast amount of literature dealing with the implications of family responsibilities on women's work patterns, a comparable discussion with regard to men is almost non-existent).
141. *See,* e.g., CATHARINE A. MACKINNON, TOWARD A FEMINIST THEORY OF THE STATE 224 (1989); Joan Acker, *Hierarchies, Jobs, Bodies: A Theory of Gendered Organizations,* 4 GENDER & SOC'Y 139, 146–147 (1990).
142. *See* Williams and Segal, *supra* note 67, at 80.

among men, and as masculinities theory has exposed,[143] there are power differences among men and not all of them are advantaged by the traditional masculine work culture. For instance, the situation of working-class, poor, and minority men, uncovers the notion that the ability to perform as a breadwinner is tied to class privilege as well as to race and ethnicity, *inter alia*.[144] Therefore, stating that work is a privilege refers to a specific group of men—those who work in high-status, highly paid jobs. Second, and related to the previous point, even those who are considered as privileged at work and "pass" as ideal workers, suffer at the personal level as fathers and partners. As Professor Joan Williams argues:

> Breadwinners, even affluent ones, also feel the pressure of being a family's sole support…the straightjacket of conventional masculinity hurts not only men unable to live up to socially accepted male roles but also the many men who play those roles well but ultimately feel imprisoned by them.[145]

Indeed, a growing body of literature has demonstrated the damages caused by heavy work load, showing that overwork entails negative health outcomes.[146] The increased demands of the workforce takes a heavy toll on men who are expected to provide for their families and therefore are forced to fulfill total time norms. Furthermore, adhering to the ideal worker norm entails personal and familial sacrifices as it requires men and fathers to subordinate their relationship with partners and children for wage work.[147] Third, many fathers cannot adhere to the total work demands and function as ideal workers due to their marital status or sexual orientation: As divorce rates are on the rise both in Israel and in the U.S.,[148] more and more fathers face a new reality in which they need to integrate work and home differently than the way they used to. Interestingly, this new reality enables some fathers to "re-discover" their fatherhood and they report an increased paternal involvement in comparison to the past, when they were still married.[149] Yet, they are required to calibrate their priorities, including the adjustment of their work schedule in order to meet their children's needs, and hence for many such fathers, this new era of enhanced fatherhood means also the diminishment of their status as ideal workers.[150] Likewise, fathers in same-sex families need to set a division between work outside and inside the home which, in the absence of a woman, is not based on gendered assumptions, and thus at least one of the men cannot adhere to strict working time norms.[151]

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143. *See supra* section §9.01[B].
144. *See* MAKING MEN INTO FATHERS, *supra* note 9, at 18, 63; *see also* WILLIAMS, RESHAPING, *supra* note 16, at 81.
145. *See* WILLIAMS, RESHAPING, *supra* note 16, at 83.
146. *See* Dowd, *supra* note 4, at 230; *see also* Aharoni-Goldenberg, *supra* note 119, at 222–224; Stier and Sella-Dotan, *supra* note 61, at 226.
147. *See* WILLIAMS, RESHAPING, *supra* note 16, at 81; *see also* DOWD, THE MAN QUESTION, *supra* note 4, at 110.
148. *See* Belcher-Prigat and Hacker, *supra* note 42, at 6–7; *see also* Renan-Barzilay, *supra* note 14, at 313–314; Cohen-Israeli, *supra* note 101, at 213. In the U.S., *see* Dowd, *supra* note 14, at 1055.
149. *See* Cohen-Israeli and Remennick, *supra* note 100, at 547.
150. *See* Cohen-Israeli, *supra* note 101, at 213.
151. Dara Purvis, *The Sexual Orientation of Fatherhood,* MICH. ST. L. REV. 983, 997–1005 (2013).

Yet, besides life circumstances which force fathers to take a greater role in child rearing, a growing number of Israeli and American fathers today realize that they want to be more involved in their children's lives.[152] Many state that they do not want to be like their own fathers, who barely spent time with them as children.[153] Indeed, an increased number of fathers regard parenting as a central part in their lives:[154] they are spending more time with their children today than did their counterparts three decades ago,[155] and are also more involved in housework duties, such as cooking and housecleaning.[156] However, with growing responsibilities comes an enlarged work-family conflict. Israeli and American fathers, especially in dual-earner families, are experiencing more work-family conflicts than their counterparts thirty years ago—and more than present-day mothers.[157] Professor Daphna Hacker demonstrates the predicament of Israeli fathers today:

> Fathers today are exposed to contradicting images of maleness and fatherhood, ranging from the ideal rational, competitive worker who is expected to invest all his time and energy in the job market to the "new father," who is expected to spend time at home and create meaningful emotional relations with his children. In fact, there are no binding social scripts that guide and shape fathers' behavior, neither during marriage nor after divorce.[158]

The complexity in many fathers' lives today could explain the persistent gap between fathers' expressed desire to be more involved at home—and their actual involvement.[159]

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152. *See* Kari Palazzari, *The Daddy Double-Bind: How the Family and Medical Leave Act Perpetuates Sex Inequality Across All Class Levels*, 16 COLUM. J. GENDER & L. 429, at 444; *see also* Ellen Galinsky, Kerstin Aumann, James T. Bond, *Times Are Changing: Gender and Generation at Work and at Home* 14 (2011), *available at* http://familiesandwork.org/site/research/reports/Times_Are_Changing.pdf [hereinafter *Times Are Changing*]; Dowd, *Masculinities and Feminist Legal Theory, supra* note 4, at 239; Anne-Marie Slaughter, *Why Women Still Can't Have it All, available at* http://www.theatlantic.com/magazine/archive/2012/07/why-women-still-cant-have-it-all/309020/; WILLIAMS, RESHAPING, *supra* note 16, at 89. In Israel, *see* Hacker and Frenkel, *supra* note 14, at 284.

153. *See* Marianne Cooper, *Being the "Go-To Guy": Fatherhood, Masculinity, and the Organization of Work in Silicon Valley*, 23(4) QUALITATIVE SOCIOLOGY 379, 391 (2000). In Israel, *see* Hacker and Frenkel, *supra* note 14, at 284.

154. *See* Palazzari, *supra* note 152, at 444.

155. *See Times Are Changing*, *supra* note 152; *see also* Dowd, *Masculinities and Feminist Legal Theory, supra* note 4, at 239.

156. *See* Cohen-Israeli and Remennick, *supra* note 100, at 537.

157. *See Times Are Changing, supra* note 152, at 18–19; *see also* HARRINGTON ET AL, *supra* note 140, at 4; Michelle A. Travis, *The Future of Work-Family Policy: Is "Choice" the Right Choice?: Review of Women & Employment: Changing Lives and New Challenges*, 13 EMP. RTS. & EMP. POL'Y J. 385, 417 (2009). In Israel, *see* Gershoni, *supra* note 40, at 73–74.

158. *See* Hacker, *supra* note 15, at 419.

159. *See* Abrams, *supra* note 20, at 760–762; *see also* Michael Selmi, *Family Leave and the Gender Wage Gap*, 78 N.C.L. REV. 707, 755 (2000); Lars Plantin, *Different Classes, Different Fathers? On Fatherhood, Economic Conditions and Class in Sweden*, 10(1) COMMUNITY, WORK AND FAMILY 93–110 (2007); HARRINGTON ET AL., *supra* note 140, at 15; and also at 31; Laura T. Kessler, *The Attachment Gap: Employment Discrimination Law, Women's Cultural Caregiving, and the Limits of Economic and Liberal Legal Theory*, 34 U. MICH. J.L. REFORM 371, 420 (2001). In Israel, *see* Gershoni, *supra* note 40, at 73–74.

Lastly, arguing that the ideal worker norm constitutes discrimination solely or mainly against women virtually strengthens the norm that women are—and should continue to be—the primary caregivers. Thus, when scholars and advocates demand that the workplace be restructured, or "accommodated," to adjust to women's needs, they are not only stagnating women's status but also men's, albeit in a distinctive way: Such a view assumes that men, as ideal workers, are privileged, while women, who cannot function as ideal workers due to their caregiving duties, are discriminated against. This notion implicitly—though unintentionally—sees market work as superior to care work. Yet, when looking at work and care differently we can argue that many Israeli and American mothers today might even be in a better position than fathers in terms of combining work and family. To begin with, working mothers have more legal arrangements and benefits as parents than fathers, especially in Israel.[160] Moreover, mothers' usage of work-family entitlements is viewed more favorably than that of fathers' usage.[161] Therefore, even when statutes—in Israel or in the U.S.—are framed in a gender-neutral language, it is mothers who, for the most part, will use these entitlements.[162] To be clear, many mothers in both countries still pay a price at work for this integration,[163] yet fathers pay a price for their lack of integration in their personal and family life. Seeing care work as more important than market work—or, at least, as equally important—highlights working fathers' sacrifices and compelled disadvantages.

To conclude, it is about time we started exploring the impacts of workplace norms on men and fathers. As this Part has demonstrated, being required to be the ideal worker entails significant hardship for fathers—both for those who cannot achieve this ideal in the first place, and those who do. Hence, in order for work-family policy to be effective and not merely formal, the connection between masculinities imperatives and the provider status must be identified, analyzed and challenged.[164] The last part of this chapter will suggest new insights for how to effectuate social change for male working caregivers, and ultimately for all working caregivers. Drawing on new-institutionalism theory and revealing its linkage to masculinities theory might be key to mitigating fathers' work-family conflicts.

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160. *See supra* section §9.02.
161. *See* Dowd, *supra* note 14, at 1059 (arguing that it is possible for women to balance work and family). As was discussed before, Israeli and American fathers who use work-family arrangements are often regarded as men who deviate from their proper gendered role. *See supra* section §9.02.
162. With respect to family leave, for example, only a miniscule number of Israeli fathers have taken leave following the birth of a baby. *See* Matzner-Heruti, *supra* note 85, at 476. Likewise, American fathers have taken less family leave in comparison to mothers. *See,* e.g., A. Armenia and N. Gerstel, *Family Leaves, the FMLA and Gender Neutrality: The Intersection of Race and Gender*, 35 Soc. Sci. Res. 871, 886–887 (2006); *see also* http://www.forbes.com/sites/learnvest/2013/06/14/why-men-dont-take-paternity-leave/; Halverson, *supra* note 92, 259–61; Gillian Lester, *A Defense of Paid Family Leave*, 28 Harv. J.L. & Gender 1, 69 (2005); Michael Selmi, *Is Something Better than Nothing? Critical Reflections on Ten Years of the FMLA*, 15 Wash. U. J.L. & Pol'y 65, 75 (2004).
163. An impressive amount of research has been done about workplace discrimination against women and mothers.
164. *See* Abrams, *supra* note 20, at 761.

§9.05   MASCULINITIES THEORY MEETS NEO-INSTITUTIONALISM THEORY

Masculinities theory suggests a complicated linkage between being a man and being a provider which places a heavy burden on fathers. This linkage also explains why most Israeli and American fathers are reluctant to use legal entitlements, such as family leave and flexible work arrangements. If most fathers do not use legal mandates, it seems pointless to advocate for more mandates. Rather, our efforts should be invested in other directions that have more potential to really help caregivers.

In this last part I would like to develop a twofold strategy to ameliorate fathers' work-family conflict. I use core principles from masculinities theory to shed light on the reasons why working fathers are deterred or encouraged to use work-family entitlements. In addition, I use core principles from neo-institutionalism theory to analyze organizations' motives to adopt certain work-family policies. Integrating these theories will allow for a novel and nuanced insight that could enrich the work-family debate.

[A]   What Influences Fathers to Use Work-Family Policy? The Effect of the Organizational Environment

The answer to the question of what causes fathers to use work-family entitlements is rather simple: their workplace environment. Supervisors play a key role in helping or discouraging male employees to integrate work and family demands, and fathers will use work-family entitlements if their employers are supportive of such a behavior.[165] Initially, supervisors have to communicate the available entitlements properly to their employees and convey the message that the latter are encouraged to use them.[166] Hence, organizations that have merely formal work-family policies can be misleading in a way that does not expose the real unsupportive organizational atmosphere towards male caregivers.[167] These policies may remain practically decoupled from the organization's norms and practices and consequently have little effect on changing the behavior of managers and their attitudes towards working caregivers.

However, not only supervisors impact fathers' level of work-family integration but also their peers.[168] Fathers will use the organization's policies if other male employees do the same.[169] Put another way, fathers emulate their male colleagues' behavior and chances become higher that the former be more involved as caregivers if the latter are. Several studies affirm that, demonstrating that team members' behavior

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165. *See* Stier and Sella-Dotan, *supra* note 61, at 236–237; *see also* Albiston, *supra* note 61, at 411.
166. *See* Stier and Sella-Dotan, *supra* note 61, at 233; *see also* Jacobs and Gerson, *supra* note 87, at 472; Julie Holliday Wayne and Bryanne L. Cordeiro *Who Is a Good Organizational Citizen? Social Perception of Male and Female Employees Who Use Family Leave*, 49 Sex Roles 233, 244–245 (2003).
167. *See* Albiston, *supra* note 61, at 409–411; *see also* Catherine R. Albiston, *Bargaining in the Shadow of Social Institutions: Competing Discourses and Social Change in Workplace Mobilization of Civil Rights*, 39 Law & Soc'y Rev. 11 (2005); Stier and Sella-Dotan, *supra* note 61, at 233.
168. *See* Stier and Sella-Dotan, *supra* note 61, at 237.
169. *See supra* note 40, and accompanying text.

has a major impact on employees' use of work-family entitlements.[170] These data corroborate one of masculinities theory's core principles that men feel the constant need to prove their masculinity to other men: "[w]e are under the constant careful scrutiny of other men. Other men watch us, rank us, grant our acceptance into the realm of manhood. Manhood is demonstrated for other men's approval."[171] Hence, men will not display their involvement in caregiving lest other men scrutinize them and regard this behavior as unmanly. Therefore, fathers will be more involved in caregiving if their male colleagues are, and their supervisors encourage such behavior, which proves that a supportive atmosphere toward male caregivers within the organization is critical.

Organizations can foster a supportive environment for caregivers by informing the workers that integrating their multiple life responsibilities is acceptable and allowed.[172] Moreover, they can convey the message that the ideal worker is virtually an unrealistic ideal and no one should invest all of his time and energy in work. They can also give employees more control over their own time, knowing that not only will it help the worker, but it will be good for the business as well.[173]

[B]   What Influences Organizations to Adopt Work-Family Policy? The Effect of the Organizational Field

When exploring what influences organizations to adopt certain work-family policies, an interesting finding comes up: they are emulating other organizations in their field.[174] While it was common to contend that organizations adopt work-family policies only for economic reasons or because they fear legal sanctions, neo-institutionalism theory has shown that organizations, similar to social actors, actually copy the behavior of other organizations.[175] Indeed, organizations might adopt more generous work-family policies than they are required by law, if their organizational counterparts had them. A fascinating example for the mimetic element can be tracked in the decisions of many tech companies, one following the other, to expand their paid parental leave policies.

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170. *Id.*
171. *See* Michael S. Kimmel, *Masculinity as Homophobia: Fear, Shame, and Silence in the Construction of Gender Identity*, *in* THE GENDER OF DESIRE: ESSAYS ON MALE SEXUALITY 25, 33 (2005); *see also* MICHAEL S. KIMMEL, MANHOOD IN AMERICA: A CULTURAL HISTORY (1996) (providing a history of U.S. masculinity).
172. *See* Stier and Sella-Dotan, *supra* note 61, at 236–237.
173. A significant amount of studies has examined the effect of work-family arrangements on the organization's bottom line. *See, e.g.,* Byron Y. Lee and Sanford E. DeVoe, *Flextime and Profitability*, 51 INDUS. RELATIONS 298 (2012) (this study, conducted in Canada, examined the effect of flextime on profitability. The findings indicate "that flextime increases profitability when implemented within a strategy centered on employees but decreases profitability when implemented within a strategy focused on cost reduction"); *see also* Phyllis Moen, Erin L. Kelly and Rachelle Hill, *Does Enhancing Work-Time Control and Flexibility Reduce Turnover? A Naturally Occurring Experiment*, 58 SOC. PROBS. 69 (2011); Williams and Segal, *supra* note 67, at 78–79 (providing references for the human resource literature on the "business case"); Ladge et al., *supra* note 98, at 2 (reporting that organizations that encourage work-family integration generate positive work-related outcomes).
174. *See* Albiston, *supra* note 61, at 406–407.
175. *Id.* at 407.

Companies like Amazon, Apple, Microsoft, Yahoo and Facebook now offer generous paid maternity and paternity leave.[176] For instance, Facebook provides the company's workers around the world with four months of paid parental leave (regardless of their gender).[177] Not long after Facebook's announcement, e-bay also declared its new policy of parental leave.[178] Evidently, creating work-family policies is related to the specific industry, and tech companies extend their benefits in order to retain and attract workers. To be sure, neither of the companies is obliged by law to provide paid family leave which shows that other forces alongside legal sanctions drive organizations to adopt work-family policies. This is not to say that state's enactment of legal mandates is not important as a means of enabling workers to integrate their work and family. It does say, however, that organizations might adopt policies regardless of state laws. Nevertheless, it is important to remember that while there is no doubt that the enactment of paid family leave policies by tech companies is a blessed step, companies might also change their policies just as easily. This is in contrast to state laws that involve a complicated legislative process on the one hand, and which are more difficult to change once enacted, on the other hand.

　　To conclude, masculinities theory and neo-institutionalism theory complement each other in a way that helps to explain critical processes both within the organization and among a cohort of organizations of the same industry. At the organization level, it has been shown that formal work-family policies will not suffice inasmuch as they are supported and encouraged by supervisors and coworkers. While the organizational environment affects employees' usage of work-family benefits in general, a supportive environment is especially important with regard to male caregivers. This is because male workers who display their involvement in caregiving in an unsupportive work-place risk both their work status and their manly front which are tightly connected.[179] Alternatively, fathers will display their role as caregivers only if other male employees will. At the organizational field level, a similar dynamics occurs, as neo-institutionalism theory has shown that not only are workers imitating others but also organizations are. Organizations' desire to receive legitimacy within the field is not less strong than their wish to produce compliance with legal mandates. As the processes occurring in many tech companies show, when certain organizations decide to provide their workers with work-family policies beyond the law's requirements, other organizations might follow. Therefore, real change on the ground for male caregivers is significantly hinged upon their organization. Realizing the "domino effect" both among

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176. Alicia Adamczyk, *These Are the Companies with the Best Parental Leave Policies*, MONEY (11.4.15), http://time.com/money/4098469/paid-parental-leave-google-amazon-apple-facebook/.

177. Chloe Angyal, *Facebook Announces Four Months of Paid Parental Leave for All Employees*, THE HUFFINGTON POST (11.27.2015 11:45 pm ET), http://www.huffingtonpost.com/entry/facebook-announces-four-months-of-paid-parental-leave-for-all-employees_us_56592f7ee4b079b2818a75b4.

178. Valentina Zarya, *This is the Latest Tech Company to Update Its Parental Leave Policy*, FORTUNE (12.4.15 3:15 pm EDT), http://fortune.com/2015/12/04/tech-company-leave/.

179. *See supra* section §9.01[C].

organizations and employees themselves leads to the conclusion that crafting work-family policies must be done in conjunction with human resources professionals at leading organizations.[180]

§9.06   CONCLUSION

Looking at the work-family imbalance of working fathers through different cultural contexts reveals how fathers' ability to combine work and caregiving is determined by the confluence of legal rules with background rules and social norms. As the comparative analysis of masculinities norms between Israel and the U.S. showed, both societies reinforce the notion that breadwinning is connected to masculinity and therefore fathers should adhere to the strict norms of the workplace in order to be able to provide for their families. However, the requirement to function as an ideal worker comes at a personal and familial price fathers in both countries often pay. This chapter furthered the argument that exposing this price is crucial not only for ameliorating fathers' work-family conflicts but also for dismantling the entrenchment of workplace norms. In order to dismantle these norms, attention should be given to the role of organizations in promoting or hindering fathers' work-family integration. Thus, this chapter suggested using insights from neo-institutionalism theory in connection with masculinities theory to shed light on the motives that drive organizations to adopt work-family policies and fathers to use them.

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180. *See* Albiston, *supra* note 61, at 408; *see also* Williams and Segal, *supra* note 67, at 117.