

Empiricism and Equality: Studying Fathers' Rights

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Kelly A. Behre, *Digging Beneath the Equality Language: The Influence of the Fathers' Rights Movement on Intimate Partner Violence Public Policy Debates and Family Law Reform*, 21 **Wm. & Mary J. Women & L.** (forthcoming 2014), available at [SSRN](#).

The fathers' rights movement relies on the rhetoric of equality. Men, it seems, are discriminated against because the law has come under the sway of feminists. Feminists have prevailed upon the law to intrude in areas where the government has no business, such as the home. Moreover, feminists have convinced policy makers that there is an epidemic of domestic violence perpetrated by men upon women and that adult intimate partner violence should be considered in issues of custody of children. The correct view according to the fathers' rights movement, is that true equality means gender-neutrality.

While discussions, critiques, and analysis of the equality rhetoric of the international fathers' rights movements are not novel, Kelly Behre's article, *Digging Beneath the Equality Language: The Influence of the Fathers' Rights Movement on Intimate Partner Violence Public Policy Debates and Family Law Reform*, does – – – as the title promises – – – “dig beneath.” The article's first section is an excellent overview of the equality narratives of the fathers' rights movement, including the appeal to civil rights movements and the use of both discrimination and gender-neutral tropes. But the real contribution of Behre's article is her exploration of the relationship between empiricism and equality.

Behre focuses on a year-long study of civil protective order petitions in Cabell County, West Virginia, authored by a fathers' rights activist. The “evaluation” coded the 1303 protective order cases in the county by gender of petitioner, respondent, and judge, and by outcome. It determined that in 76% of petitions, the case was eventually dismissed, and at the same rate for men and women petitioners. Given this data, the evaluation proclaimed several conclusions. It concluded that the courts waste a great deal of time on domestic violence. It concluded that most claims of intimate partner violence are false, thus confirming the “suspicions” of court personnel who believe that protective order petitions are filed to “gain leverage in divorce, child custody or relationship battles and a coercive tactic to gain power and control over another.” And it concluded that men and women are equally likely to commit verified domestic violence.

Even assuming that one could make such generalizations from a year's observation from a single county in West Virginia, these determinations do not necessarily follow from the data. Behre shows how the “conclusions” involve various mistakes (e.g., denominating petitions dismissed for a failure of the petitioner to appear as petitions dismissed for false allegations), misapprehensions (e.g., the overall rate of 24% of cases that proceed to final resolution in protective order cases is generally greater than the less than 10% of cases that proceed to trial in civil cases); and misinterpretations (e.g., the percentage of petitions granted to women may be the same as men, but there are three times as many petitions filed by women than by men). She also notes the introduction of the beliefs of anonymous court personnel, the use of a particular vocabulary (“coercive,” “power” and “control”), and the subtle invocation of stereotypes of women.

However faulty, the Cabell Evaluation's “conclusions” were recirculated as empirically-supported

truths. Behre details how the conclusions occur in a “Report to the Governor” issued by the state fathers’ rights group, in an article in an economics journal by a fathers’ rights advocate, in a family and economics journal by that same advocate, and in conferences and on websites sponsored by fathers’ rights groups. This is not surprising. But these conclusions drawn from a one year in Cabell County, West Virginia, also appeared as “facts” in the state’s legal newspaper, other media, law review articles, a brief, legislative committee reports, and in policy speeches by politicians in various states. And both the facts and their sources morphed: the failure to proceed to final determination became “ 81% of domestic violence protection orders were false or unnecessary” and this conclusion was no longer based on a single county in West Virginia but was made the “Virginia Crime Commission.”

The “evaluation” thus became the empirical basis supporting the need to address men’s inequality. Behre discusses the legislative bills introduced in West Virginia and other states, including ones creating new criminal sanctions for false allegations of domestic violence or child abuse during custody cases. Another bill seeks to create statutory presumptions in favor of equal (50-50) physical custody of children (which eliminate child support) rather than judicial determinations of best interests of the child, even in cases of domestic violence. As Behre notes, the popularity of these measures is not only buoyed by values masquerading as data, but also by stereotypes: women are untrustworthy, manipulative, and greedy.

Behre’s article is worth reading for its “deep dig” into the reality, rhetoric, and social science of “fathers’ rights.” Gender equality in family law remains worthy of our attention. But Behre’s article is also worth reading for its applicability to issues involving “reverse discrimination,” “color-blindness,” or formal equality, in which similar empirical underpinnings promote continued subordination. Digging beneath the equality rhetoric does not only unearth profound differences in the meanings of equality, it may also surface a dirty study.

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