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Politics and American Motherhood in the 1930s: Red-baiting, Child Custody,  
and the Strange Case of Mrs. Eaton

Warren P. and Mabel (née Weber) Eaton of Montclair, New Jersey had never had an easy marriage, but 1934 was a particularly difficult year. In April, Mabel hosted a raucous party; the evening ended with Warren locking her out of the house. Several months later, the couple argued so loudly on the street that a concerned neighbor called the police. Mabel and Warren’s relationship deteriorated even further in December. The point of contention was a book of songs published by the Industrial Workers of the World (I.W.W.), which Warren deemed offensive and removed from his wife’s purse without her permission. Mabel confronted him on Christmas Eve and another fight ensued. Mabel later alleged that Warren struck her on the head, knocking her “stunned, to the floor in a semi-conscious state.”<sup>1</sup> Warren’s friend Anthony Bottone, who claimed to have witnessed the altercation, disputed her story. If anyone had been violent, he asserted, it was Mabel. Either way, this clash was the last straw. On September 5, 1935, Mabel filed for divorce on the grounds of extreme cruelty.<sup>2</sup>

Less than six months later, the Eatons found themselves in the middle of an unanticipated media and political firestorm. What made their case remarkable—so much so that it was the only divorce of the 16,000 suits that Advisory Master Robert D. Grosman heard during his long career that merited a mention in his obituary—was

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<sup>1</sup> “Petition for Divorce,” New Jersey Court of Errors and Appeals, Vol. 1455, 1937 (hereafter NJCEA), 2. The unpublished volumes of Court of Errors and Appeals cases are housed in the New Jersey State Library in Trenton, New Jersey. I use each member of the Eaton family’s given names for the purpose of clarity. While Warren and Mabel’s son, Warren, was technically “Warren Perley Eaton, III,” the Eaton family, legal records, and the media all called him “Warren Jr.”

<sup>2</sup> *Ibid.*, 1.

Grosman's decision to overturn established legal tradition and to award custody of the Eatons' young children, Mabel Florence (ten) and Warren Jr. (five), to their father.<sup>3</sup> He took this extraordinary step because he believed that Mabel would raise the children as atheists and communists, against her ex-husband's wishes. The decision captured the interest of Americans across the country. Radio broadcasts, magazines, and newspapers, especially in the New York metropolitan area, eagerly reported the Advisory Master's controversial ruling and the subsequent appeals process.<sup>4</sup>

Mabel actively courted media attention, which she received because she was an intriguing and enigmatic figure. Was she a dangerous "Red" who wanted to rear her minor children in keeping with her "un-American" convictions? Or was she a doting and persecuted mother, falsely accused by her husband and unfairly denied her custodial rights? The answers to these questions depended both upon one's interpretation of the evidence—very little proof existed of Mabel's alleged radical ties—and how one defined the rights and duties of American mothers.<sup>5</sup> Indeed, these aspects of parenting were fiercely contested during the 1930s. As historian Rebecca Jo Plant has argued, the years between the First and Second World Wars were transformative ones for motherhood in the United States. Some men and women at this time still strongly believed in Victorian notions of encompassing and self-sacrificing "mother love." Many psychologists, social

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<sup>3</sup> "Advisory Master" was the title given to chancery court judges in New Jersey. "Robert Grosman, Attorney, Is Dead," *New York Times* (hereafter *NYT*), Dec. 18, 1955.

<sup>4</sup> Numerous newspaper and magazine articles about the case are cited throughout this article. Letters to the American Civil Liberties Union (ACLU) reference a *March of Time* radio broadcast: Ellen Loeb to the ACLU, Feb. [?], 1936 and Laura Geddes Miller to the Civil Liberty League [sic], Feb. 7, 1936, American Civil Liberties Union Records, The Roger Baldwin Years, Roll No. 139, Vol. 943, Seeley G. Mudd Manuscript Library, Princeton University (unless otherwise noted, all cited letters are from this microfilm reel). Another contemporary treatment of the case is Ernest Sutherland Bates and Alan Williams, *American Hurly-Burly* (New York: R.M. McBride, 1937), 282-83.

<sup>5</sup> An important antecedent to this debate took place during World War I. See Kathleen Kennedy, *Disloyal Mothers and Scurrilous Citizens: Women and Subversion during World War I* (Bloomington and Indianapolis: Indiana University Press, 1999).

commentators, and even mothers, however, were starting to express skepticism about the worth of single-minded maternal devotion. This side argued that American mothers were entirely too wrapped up in their children's lives, to the detriment of themselves and of their offspring.<sup>6</sup> Strains of both sides of this debate were evident, and often at odds, throughout the course of the Eaton case.

In the court of law and the court of public opinion, Americans used this controversy as a means of discussing “good” and “bad” mothering.<sup>7</sup> During her divorce hearing, Mabel testified that her maternal instincts were sound, highlighting her knowledge and practice of the latest psychological theories about child-rearing. Indeed, in this respect, she was merely conforming to the push for a more scientific approach to mothering that had begun in the late nineteenth century.<sup>8</sup> Mabel also produced witnesses who testified to her well-run home and her dedication to her young children, emphasizing that she was as exemplary housekeeper and caregiver. She clearly believed that having intellectual and political interests outside the home did not detract from, and perhaps even enhanced, her maternal duties within it.

Warren and Advisory Master Grosman, however, disagreed with Mabel's interpretation. Grosman claimed that while she might be “mistress of her own soul,” she was “not privileged to instill into the minds of these young children, against the will of

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<sup>6</sup> Rebecca Jo Plant, *Mom: The Transformation of Motherhood in Modern America* (Chicago: University of Chicago Press, 2010).

<sup>7</sup> As Molly Ladd-Taylor and Lauri Umansky have demonstrated, defining these terms at any given time is difficult, especially because the definition of a “bad” mother has been quite elastic. Molly Ladd-Taylor and Lauri Umansky, “Introduction,” in *“Bad” Mothers: The Politics of Blame in Twentieth-Century America*, eds. Molly Ladd-Taylor and Lauri Umansky (New York: New York University Press, 1998), 2. See also Ruth Feldstein, *Motherhood in Black and White: Race and Sex in American Liberalism, 1930-1965* (Ithaca: Cornell University Press, 2000).

<sup>8</sup> Julia Grant, *Raising Baby by the Book: The Education of American Mothers* (New Haven: Yale University Press, 1998); Ann Hulbert, *Raising America: Parents, Children, and a Century of Advice about Children* (New York: Knopf, 2003); Rima D. Apple, *Perfect Motherhood: Science and Childrearing in America* (New Brunswick: Rutgers University Press, 2006), chapters 3-4.

their father, these doctrines. . . which are looked upon with abhorrence by the vast majority of people living under the protection of our laws.”<sup>9</sup> By following her “soul,” Mabel learned that mixing politics and parenting could lead to trouble. The case definitively demonstrated the tenaciousness of the belief that the best mothers put their children’s wants and needs above their own in all circumstances as well as the conviction that fathers ultimately knew what was best for their families. During her appeal, Mabel acknowledged these ideas by actively refashioning her image. She now took the position that she was an aggrieved mother rather than an independent woman. Her conscious use of these stereotypes demonstrates that Mabel was not simply a victim in this case. She was, however, a woman torn between the pursuit of new ideas and the desire to be her children’s primary caregiver, as well as two competing definitions of ideal motherhood.

To the leaders of the American Civil Liberties Union (ACLU), which directed Mabel’s appeal for most of 1936, it was possible for their client to be a person with radical political beliefs and a mother who had been wronged by the judicial system. ACLU founder Roger Nash Baldwin and his team firmly believed that Grosman had violated Mabel’s constitutional rights by denying custody on the basis of her religious and political beliefs. They had a strong case. But Mabel’s story did not conclude with a happy ending for her or for the ACLU. Her relationship with the organization grew increasingly rocky as its plan for the appeal diverged from her own. Her ACLU lawyers expected Mabel to be pliant and grateful for their assistance; she wanted them to treat her as an equal and to be responsive to her concerns. Deadlocked, they parted ways before her appeal (which ultimately failed) came before the New Jersey Court of Errors and Appeals. The ACLU approved of what Mabel stood for in the abstract, but its leaders

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<sup>9</sup> “Memorandum,” NJCEA, 299-300.

were disappointed and dismissive when she tried to maintain some level of personal control over the case. Despite its reputation as an important liberal (if not radical) organization, the ACLU revealed a decidedly conservative attitude in its dealings with an assertive female client in this instance.<sup>10</sup>

While Mabel's situation was undoubtedly, in the words of ACLU fundraising materials, "strange," it nevertheless resonated with the public because it highlighted growing anxieties about divorce, custody, and gender roles, as well as domestic and international politics.<sup>11</sup> The Eatons' battle over their children was certainly not the first of its kind to capture widespread attention. Just a few years earlier, the disputed custody of "Little Gloria" Vanderbilt had similarly made national headlines.<sup>12</sup> Nor was Warren alone in seeking child custody because of his wife's political activities. In the 1911 divorce of Lee and Nora Blatch De Forest, for instance, Lee unsuccessfully sought custody of their young daughter based on the claim that his wife, the daughter of Harriet Stanton Blatch and granddaughter of Elizabeth Cady Stanton, had "given herself so completely over to the cause of suffrage" that she was neglecting the child.<sup>13</sup>

But the Eaton case was different from the usual ones that captured public attention because it did not feature the exploits of the rich and famous. Rather, the family lived a comfortable lower middle-class existence on Warren's salary as a woolen

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<sup>10</sup> Mabel's experience predates a similar case (albeit with a different liberal organization) discussed by Ruth Feldstein in "'I Wanted the Whole World to See': Race, Gender, and Constructions of Motherhood in the Death of Emmett Till," in *Not June Cleaver: Women and Gender in Postwar America, 1945-1960*, ed. Joanne Meyerowitz, (Philadelphia: Temple University Press, 1994), 263-303.

<sup>11</sup> "The Strange Case of Mrs. Eaton," American Civil Liberties Union Records, The Roger Baldwin Years, Roll No. 139, Vol. 943, Seeley G. Mudd Manuscript Library, Princeton University.

<sup>12</sup> "Mrs. Whitney Wins Custody of Girl; Court Holds Mrs. Vanderbilt Unfit," *NYT*, Nov. 22, 1934. In a slightly different vein, the mid-1930s also witnessed a wealthy family publicly battling in the courts about a mother's decision to prevent her daughter from having children through forced sterilization. Wendy Kline, *Building a Better Race: Gender, Sexuality, and Eugenics from the Turn of the Century to the Baby Boom* (Berkeley: University of California Press, 2001), chapter 4.

<sup>13</sup> "De Forest Wants Custody of Child," *San Francisco Chronicle*, Oct. 18, 1911; "De Forest Seeks Relief," *NYT*, May 18, 1920.

salesman.<sup>14</sup> By the 1930s, divorce and desertion were not limited to the very rich and the very poor, but rather reached broadly into the middle class.<sup>15</sup> This trend contributed to rising concerns about what would happen to the children of such failed unions. Parents and experts fretted not only about potential custody disputes, but also about whether sons and daughters would prosper—materially and psychologically—after their mothers and fathers divorced.<sup>16</sup> The Eatons' custody dispute thus presented a cautionary, albeit exaggerated, tale of what could go wrong when parents ended their marriages.

The controversy over the Eaton verdict also spoke more broadly to fears about the fate of the American family during the Great Depression. Some commentators argued that hard financial times benefitted families, because the shared experience of scarcity brought them closer together. Many more, however, believed that the patriarchal family was in a precarious position. Experts expressed concern about the falling marriage rate, as well as the rising incidence of desertion. They worried, too, that unemployed men would experience a loss of self-esteem and purpose and warned that husbands and fathers could become superfluous as women took over breadwinning responsibilities. These same experts also questioned whether newly assertive women could retain their femininity and continue to fulfill their roles as loving wives and mothers.<sup>17</sup> While it is

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<sup>14</sup> This assessment of the Eatons' class status is borne out by the 1930 Census. Their neighbors in Bloomfield, New Jersey worked in a variety of working-class or lower middle-class jobs. One of their immediate neighbors was a teacher; another was a plumber. 1930 U.S. Federal Census (Population Schedule), Bloomfield, Essex County, New Jersey, Enumeration District No. 7-350, Sheets No. 7A and 7B, Jpeg image, (Online: The Generations Network, Inc., 2009). Digital scan of original records in the National Archives, Washington, DC, <http://www.ancestry.com>. Accessed June 8, 2010.

<sup>15</sup> Kristin Celello, *Making Marriage Work: A History of Marriage and Divorce in the Twentieth-Century United States* (Chapel Hill: University of North Carolina Press, 2009), 26-27.

<sup>16</sup> William Johnston, "Divorced Children," *Good Housekeeping*, Dec. 1926, 30-31, 199-202; "The Insecurity of the Child," *Nation*, March 19, 1930, 323-24; "A Mother of Two, "Is There a Way Out for the Children?" *Parents' Magazine*, April 1936, 24; "When Parents Divorce," *Ladies' Home Journal*, April 1939, 22, 59-60.

<sup>17</sup> Divorce rates declined as desertion rates climbed in the 1930s. Steven Mintz and Susan Kellogg, *Domestic Revolutions: A Social History of American Family Life* (New York: Free Press, 1988), 136-39;

debatable how much depictions of changing roles reflected reality, the perception of gender crisis was nevertheless significant for many Americans in the 1930s.<sup>18</sup>

Even though the Eatons' personal experience of the Depression included relatively few financial disruptions, these issues nevertheless informed their divorce and custody battle. Warren, in particular, grappled with how best to describe his role in the Eaton household. Throughout the divorce trial, he claimed that Mabel's maternal failures left him with no choice but to be both the breadwinner and the caregiver in their home. But he simultaneously expressed resentment for having to perform tasks such as cooking, sewing, and childcare, which he obviously believed were women's work. Yet, in asking for custody, he agreed to continue his dual responsibilities, perhaps permanently. Negotiating this breakdown of traditional parental roles was unquestionably challenging for Warren, who remained invested in the patriarchal family at the same time that he posed an active challenge to some of its primary tenets. It is likely that Warren shied away from the media spotlight not only because he had won custody, but also because he understood the contradictions inherent in his position. He did not want to invite closer public inspection of his actions, especially at a time in which Americans feared the collapse of male authority within the home.

The Eaton case transfixed the American public because of its association with radical politics as well. New York City—where Mabel traveled from her suburban home to hear lectures on a variety of topics—was indeed an epicenter of left-wing political activity at the time. If Mabel had, in fact, been a communist or an atheist, she could have

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Elaine Tyler May, *Homeward Bound: American Families in the Cold War Era* (New York: Basic Books, 1988), chapter 2; Rebecca L. Davis, *More Perfect Unions; The American Search for Marital Bliss* (Cambridge: Harvard University Press, 2010), chapter 2.

<sup>18</sup> This concern was also evident in debates about social security: Linda Gordon, *Pitied but Not Entitled: Single Mothers and the History of Welfare, 1890-1935* (New York: Free Press, 1994).

easily found sympathetic colleagues in New York.<sup>19</sup> Expressing beliefs that might have been unremarkable in some circles within the city, however, did not always resonate elsewhere in the country. (Still, it is ironic that if Warren had shared her interests, she likely would not have found herself in a pitched custody battle, even in suburban New Jersey.)<sup>20</sup> The outcome of the trial revealed that an association with communism and “godlessness,” however peripheral, could have devastating personal and familial consequences.

Red-baiting was significantly less pervasive in the 1930s than it was during the First or Second Red Scares and has thus received relatively little attention from historians.<sup>21</sup> But the Eatons’ custody battle indicates that the practice was far from dead, even in this relatively tolerant decade. Anticomunist sentiment was on the rise by mid-decade, as were efforts to identify and to punish radicalism.<sup>22</sup> Of course, labeling President Franklin D. Roosevelt a “communist” as a political tactic was considerably different from accusing your estranged wife of being a “Red” during a custody battle.<sup>23</sup> Still, Warren’s approach was part of a longer practice in which antiradical groups employed a defense of traditional gender roles and marriage in their efforts to defeat

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<sup>19</sup> On the experiences and activism of women within the Communist Party at this time, see Kate Weigand, *Red Feminism: American Communism and the Making of Women’s Liberation* (Baltimore: Johns Hopkins University Press, 2001), chapters 1-2.

<sup>20</sup> “Common Sense,” *Newark Sunday Call*, Feb. 2, 1936, Eaton Family Press Clippings in possession of the author [hereafter Eaton Clippings]. Very few clippings include page numbers.

<sup>21</sup> On the role of gender in the former, see Kim E. Nielsen, *Un-American Womanhood: Antiradicalism, Antifeminism, and the First Red Scare* (Columbus: Ohio State University Press, 2001) and Erica Ryan, *Red War on the Family: Sex, Gender, and Americanism in the First Red Scare* (Philadelphia: Temple University Press, 2014); in the latter, Landon R. Y. Storrs, “Red Scare Politics and the Suppression of Popular Front Feminism: The Loyalty Investigation of Mary Dublin Keyserling,” *Journal of American History*, 90 (Sept. 2003): 491-524.

<sup>22</sup> Ellen Shrecker, *Many Are the Crimes: McCarthyism in America* (Princeton: Princeton University Press, 1998), chapters 2-3; George Seldes, *Witch Hunt: The Technique and Profits of Redbaiting* (New York: Modern Age Books, 1940).

<sup>23</sup> M.J. Heale, *American Anticomunism: Combating the Enemy Within, 1830-1970* (Baltimore and London: Johns Hopkins University Press, 1990), 107-08.

feminism and other “leftist” movements. That Warren was successful in tarnishing Mabel’s reputation demonstrates the continuing utility of this tactic in the 1930s.<sup>24</sup>

Mabel’s supporters, however, had a decidedly different take on the role played by national and international politics in her case. They argued that Warren’s accusations and Grosman’s decision, rather than Mabel’s beliefs, were the most “un-American” aspects of the entire episode. Critics condemned the custody ruling, claiming that it was an affront to freedom of religion and political thought. Playing on growing mid-decade fears about totalitarianism in Europe, they also warned that denying a mother custody of her children was in line with fascist or communist practices.<sup>25</sup> But even as critics objected to the ruling’s patriarchal insistence that Mabel Florence and Warren Jr. be raised according to their father’s guidelines, they could not escape their own traditionalist beliefs about women, especially that motherhood was their most important calling.

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Mabel Eaton probably did not anticipate that politics would play such a prominent role in her divorce. In fact, she may have hoped that the case would be adjudicated quickly in her favor. Her decision to ask for her marital dissolution on the grounds of cruelty likely stemmed from two sources. First, New Jersey had one of the strictest divorce laws in the country and alleging cruelty was her only viable legal choice, given that she could not prove adultery or desertion of two years duration.<sup>26</sup> Second, women frequently employed this charge because they knew that judges tended to sympathize

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<sup>24</sup> Nielsen, *Un-American Womanhood*.

<sup>25</sup> O.A.M., “Protest,” *Newark Ledger*, Feb. 14, 1936, Eaton Clippings; Benjamin L. Alpers, *Dictators, Democracy and American Public Culture: Envisioning the Totalitarian Enemy, 1920s-1950s* (Chapel Hill: University of North Carolina Press, 2002), 3-4.

<sup>26</sup> Cruelty had only been added to the list of divorceable offenses in New Jersey after a pitched political battle in 1923. Elaine Tyler May, *Great Expectations: Marriage and Divorce in Post-Victorian America* (Chicago: University of Chicago Press, 1980), 5; “Divorce Law an Issue in New Jersey Politics,” *NYT*, Aug. 19, 1923.

with wives who claimed to have been victimized by their husbands. In such cases, playing upon gendered assumptions about female weakness and their presumed need for paternalistic legal protection served a means to an end for divorcing women.<sup>27</sup>

Understanding that it was often necessary to show a clear and prolonged pattern of abuse in order to prove cruelty, Mabel and her lawyer, Bertram C. Duncan, cataloged a long list of grievances in her divorce petition. It claimed that Warren had “frequently called the petitioner [Mabel] vile names unfit to mention, unjustly accused petitioner of having improper relations with other men; that defendant [Warren] continually belittled petitioner, degraded her before her friends and neighbors, nagged continually, interfered with her care of the house and children, and beat and struck the petitioner.”<sup>28</sup> It then cited seven specific instances of cruelty, beginning in 1925 and culminating in the couple’s December 1934 fight. The collective effects of her husband’s actions, Mabel asserted, were that her “health and person were endangered” and her life “was rendered one of wretchedness and misery.”<sup>29</sup> She thus requested a divorce, custody of the children, and financial support from her estranged husband.

Mabel’s petition fit the letter of New Jersey law. By the 1930s, many Americans understood that the divorce system was easy to manipulate. As a result, social critics and academics expressed deep concern that husbands and wives were colluding in order to obtain divorces that did not fit with the intent of most divorce laws.<sup>30</sup> The Eatons, however, represented the rare case in which collusion did not occur. Mabel probably

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<sup>27</sup> J. Herbie DiFonzo, *Beneath the Fault Line: The Popular and Legal Culture of Divorce in Twentieth-Century America* (Charlottesville: University Press of Virginia, 1997), 44-45.

<sup>28</sup> “Petition for Divorce,” 1.

<sup>29</sup> *Ibid.*, 2.

<sup>30</sup> Dorothy Dunbar Bromley, “Divorce by Collusion Stirs a Tempest,” *New York Times Magazine*, Dec. 10, 1933, 1011; DiFonzo, *Beneath the Fault Line*, chapter 2.

suspected, therefore, that Warren would contest both her version of their union and her request for child custody. Her actions after filing for divorce betrayed these concerns: she took the children and disappeared to New York. Warren and his lawyer, J. Raymond Tiffany, took immediate action. They first convinced the Supreme Court of New York to issue a writ of *habeas corpus*, based on the claim that Mabel was an “unfit” mother. They then filed an “Answer and Counterclaim” to Mabel’s divorce petition. In this lengthy document, Warren refuted his wife’s charges, asked for his own divorce (also on the grounds of cruelty), and requested custody of the children. While it was unusual for a man to charge cruelty, Warren did not have any other options under New Jersey law.

Warren’s petition pointedly questioned Mabel’s ability to care for their children. He assumed that the court would be unsympathetic to a woman who failed in her duties as a housekeeper and a caregiver. In the case of Mabel’s housekeeping skills, for example, Warren claimed that she “frequently refused to perform the ordinary household duties of a wife about the home, saying she was not meant for ‘pot wrestling.’”<sup>31</sup> In fact, Mabel went out three or four evenings a week, leaving him to do “her” work. Warren also suggested that Mabel failed to respect his authority within the home. During a dispute over money for new curtains, for example, she allegedly struck Warren in the groin so violently that he required medical attention.<sup>32</sup> In another vituperative moment, she told him that he was a “good combination of father, mother, and nurse girl and should have been biologically made so he could have nursed the children.”<sup>33</sup>

But if Mabel’s housekeeping and attitude towards her husband left something to be desired, her mothering—or lack thereof—was downright despicable from Warren’s

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<sup>31</sup> Answer and Counterclaim, NJCEA, 9-10.

<sup>32</sup> Ibid., 13-14.

<sup>33</sup> Ibid., 11.

point of view. He maintained that she “frequently struck and abused said children, ordered them to bed without supper for some trivial or imaginary childish fault.” She became “particularly violent” when the children asked for her attention or, alternately, expressed a preference for their father. Warren insisted that Mabel was only asking for custody out of “spite;” she had once told him that she would rather kill the children than let him raise them.<sup>34</sup> He additionally alleged that Mabel’s radical political beliefs interfered with her ability to parent. He charged that Mabel was an atheist, communist, and believer in free love, given to making proclamations such as: “Jesus Christ was a myth and God was only gold;” “communism was the ideal social system;” and “girls do not have to be brought up virtuous.”<sup>35</sup>

Central to Warren’s charges against Mabel was his belief that the best American mothers displayed selfless love and devotion to their children. Mabel, he argued, was an utter failure in this regard. She not only neglected to take care of the children’s most basic needs, but she also posed an active threat to their wellbeing because of the alleged abuse and her disregard for premarital virginity including, presumably, her daughter’s. Warren’s willingness to discuss Mabel’s emasculating behavior is initially surprising, given that it portrayed him in an unflattering light. This evidence, however, lent important support to his claim that Mabel had treated him cruelly. Warren and his lawyer probably hoped that their discussion of Mabel’s actions would play upon Depression-era anxieties about aggressive women who failed to acknowledge male superiority. Conversely, Mabel argued that Warren’s weakness was the problem. She acknowledged that she had insulted her husband’s masculinity, specifically because he “seemed unable

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<sup>34</sup> Ibid., 12-13.

<sup>35</sup> Ibid., 10-11.

to act as most other men do and leave certain things to the wife where the children were concerned.”<sup>36</sup> His propensity for blurring sex roles, in other words, was what inhibited her ability to mother properly.

Both Mabel and Warren, therefore, clearly wanted to end their marriage. The real source of their rancor was the question of custody. Mabel had legal precedent on her side in this battle. During the colonial era, men had an absolute right to custody of their children. But an emergent nineteenth-century understanding of the importance of mothers in nurturing their children had led to a reversal of this practice. As a result, divorcing mothers whose sons and daughters were in their “tender years” (preadolescent) were likely to retain custody of their children. Very few men, in fact, actively sought custody. Some may not have wanted to be both breadwinners and caregivers. Others may have believed that taking on the legal preference for custodial mothers was futile. Still others may have sincerely believed that children should be raised by their mothers. Thus, while the courts had discretion in determining custody, most Americans in the 1930s would have assumed that mothers were the proper guardians for young children, except under extreme circumstances such as a mother’s mental or physical illness.<sup>37</sup>

Warren hoped to offset this precedent by placing the Eatons’ differing parenting styles on trial. The two certainly had contrasting points of view about how to raise their children. Mabel positioned herself as the more “modern” parent. She claimed to be

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<sup>36</sup> “Affidavit of Petitioner,” NJCEA, 33-34.

<sup>37</sup> Mary Ann Mason, *From Father’s Property to Children’s Rights: The History of Child Custody in the United States* (New York: Columbia University Press, 1996); Michael Grossberg, *Governing the Hearth: Law and the Family in Nineteenth-Century America* (Chapel Hill: University of North Carolina Press, 1988), chapter 7. Many women also retained custody by default, as a result of giving birth out of wedlock or of paternal desertion. Regina Kunzel, *Fallen Women, Problem Girls: Unmarried Mothers and the Professionalization of Social Work, 1890-1945* (New Haven: Yale University Press, 1993); Anna R. Igra, *Wives without Husbands: Marriage, Desertion, and Welfare in New York, 1900-1935* (Chapel Hill: University of North Carolina Press, 2006).

conversant in child psychology and believed in answering the children truthfully when they asked questions about religion and science. She elaborated: “I do not believe in telling fairy tales to children about the stork or otherwise and I have commensurate with the child’s growth, imparted truth regarding some of the realities of life.”<sup>38</sup> Warren, however, believed himself to be a defender of “traditional” values and Christianity. His primary parenting goals were to ensure that the children went to Sunday School and to protect them from their immoral, radical mother. Warren’s stance that the court should dispense with its usual custodial preferences was convincing. In a pre-trial hearing, Advisory Master Douglas Herr “suggested” that Mabel temporarily give custody to Warren because, he believed, Mabel Florence and Warren Jr. should live in New Jersey until the divorce hearing took place. Because Mabel had been staying with her sister in New York, probably because she could not afford to stay in New Jersey with the children, she had little choice but to acquiesce to this proposal.<sup>39</sup>

*Eaton v. Eaton* reached chancery court in January 1936. Much to the annoyance of Advisory Master Grosman, the testimony lasted for two days, considerably longer than the typical divorce case. Mabel and Warren both testified, as did a number of their neighbors. Mabel took the stand first and told her side of several stories that would be crucial to both cases. One such incident was the party that she had hosted in the spring of 1934. Warren had initially given his blessing for the event, but he later refused to join in, referring to the collected thirty-six guests as “scum.”<sup>40</sup> As the evening progressed, Mabel entertained her friends with supper and by reciting somewhat risqué “little poems.”

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<sup>38</sup> “Affidavit of Petitioner,” 35-36.

<sup>39</sup> “Petition by Defendant for the Custody of Children,” NJCEA, 30; “‘Isms’ Wrecked Home, Husband Complains,” *Newark Ledger*, Nov. 7, 1935, Eaton Clippings; Sol D. Kapelsohn to Ida Epstein, May 29, 1936.

<sup>40</sup> “Testimony,” NJCEA, 71.

Around 3:00 a.m., as the party broke up, Warren had a physical altercation with Mabel's brother-in-law (her sister's husband). After driving her sister home, Mabel returned to find herself locked out of the house; she only gained access by climbing a ladder up to the second floor. Mabel claimed that Warren continued to be belligerent the next day, telling her that she "came from a cocksucking family," among other insults.<sup>41</sup>

Mabel additionally testified about her habit of attending lectures in New York City. She explained that the subject matter for these talks was wide-ranging, from economics to religion to zoology. Mabel admitted that some of the meetings dealt with communism and socialism, but she downplayed their significance, maintaining that the lectures merely "touched on the different political affairs of the world."<sup>42</sup> Mabel was also insistent that her habit of attending lectures did not lead her to neglect her children. Indeed, she only left the house when Warren or a babysitter was present. She took a similar low-key approach when she addressed the circumstances under which she came to possess an I.W.W. songbook. Mabel stated that she had been given the book at a talk and had placed it in her purse to look at some other time. Three days later, however, she found that it was gone and the aforementioned dispute ensued. The key point here, in Mabel's eyes, was not the content of the book, but that Warren had violated her privacy by snooping in her things.

Mabel's case faltered, however, upon cross-examination. Tiffany (Warren's lawyer) was determined to expose Mabel as an unfit mother and a dangerous radical. He immediately began to interrogate her about her affiliation with the Rand School (founded by the American Socialist Party) and the Ingersoll Forum (the New York branch of the

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<sup>41</sup> Ibid., 73.

<sup>42</sup> Ibid., 80.

American Association for the Advancement of Atheism). When Grosman questioned the relevance of this testimony, Tiffany retorted: “This will go into her qualifications to bring up children, that she has embraced a line of life that destroys her fitness to raise children under our system of government.”<sup>43</sup> A mother with “radical” beliefs, particularly one whose husband disagreed with her opinions, in other words, gave up her right to raise her children. Mabel soon seemingly proved his point, testifying that she did not identify as a Christian or believe in the divinity of Jesus Christ, but that she did believe in evolution. (Grosman, unintentionally anticipating the media storm that followed his decision in the case, referenced the famed Scopes case when he asked Tiffany: “You are not going to get us into a monkey trial, are you?”)<sup>44</sup> Another misstep was Mabel’s willingness to concede her share of blame for the Eatons’ marital troubles. When she disclosed that she smoked cigarettes in spite of her husband’s objections to the habit, for instance, Tiffany observed: “Smoking meant more to you than happiness of your family, so you persisted in it.”<sup>45</sup> The implication that Mabel selfishly chose her pleasure over the good of her marriage and her children was clear.

Tiffany also pressed Mabel with questions about her sexual morality, or more pointedly, her lack thereof. Of particular interest were the poems that Mabel had recited at the April 1934 party. Tiffany explained to the court that the verses had contained sexually suggestive lines such as: “Since Charles’ circumcision I have come to one decision, us women haven’t got a chance” and “He said only widows have romance. When he takes you for a ride, does he ever skid and slide? Never lose control. Do you

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<sup>43</sup> Ibid., 87.

<sup>44</sup> Ibid., 97.

<sup>45</sup> Ibid., 105.

hold the brake when it's cold?"<sup>46</sup> After Mabel defended the ditties as jokes, Tiffany asked in moral outrage: "You were dealing with the intimate sex lives of people that was [sic] not true, purely to get a laugh?"<sup>47</sup> Was such a lewd woman, he insinuated to the court, fit to raise small children on her own? By the time that Duncan (Mabel's lawyer) was able to ask her some follow-up questions, much of the damage was done. From a conservative standpoint, little in her testimony upheld Mabel's contention that she was capable of giving her children "a good foundation to live a good moral life."<sup>48</sup> She also failed to contradict the claim that she would raise her children outside of her husband's values. That she burst laughing during these inquiries likely did little to help her case.

Mabel's witnesses then took the stand, largely corroborating her claims to be a dedicated parent and victim of her husband's abuse. They all testified that Warren had violently pushed Mabel to the ground during their July 1934 altercation. They also maintained that she was as good a mother and housekeeper as any other woman in their neighborhood. But this testimony did not always help Mabel's case. Charles W. Carmichael, for example, described an instance in which he heard Warren Jr. crying loudly for several hours while his father visited with neighbors down the street. If Carmichael intended for his evidence to portray Warren as a negligent parent, however, it backfired. Tiffany quickly pointed out that if "absolutely nobody was home," Mabel was as least as culpable as her husband.<sup>49</sup> At times, Mabel's witnesses also appeared to be, if not disingenuous, then at least confused. Mary A. Huot, for example, testified that Mabel was an "ideal mother." Yet, when pressed, she admitted that she did not think that any

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<sup>46</sup> Ibid., 121, 122.

<sup>47</sup> Ibid., 124.

<sup>48</sup> Ibid., 134.

<sup>49</sup> Ibid., 140.

mother who admired Russia, who did not believe in going to church, and who taught her children about evolution (all of which Mabel had admitted to) should retain custody of her offspring.<sup>50</sup>

The next day, Warren's version of events took center stage. The first witness, an old friend, reported that Mabel had told him: "children, if any, should be brought up by the State."<sup>51</sup> The family plumber and the Eatons' former landlord both claimed that Mabel had discussed communism in their presence and had tried to convince them to attend "radical" lectures. Regarding the Eatons' July altercation, all of Warren's witnesses claimed that that Warren had not struck Mabel, but rather had only tried to "cool her down."<sup>52</sup> Warren's close friends Theresa and Anthony Bottone each testified; their portrait of Mabel was not flattering. Theresa suggested that Mabel was both immoral (reporting a conversation in which Mabel allegedly supported premarital sexual intercourse and birth control) and ill-tempered.<sup>53</sup> Anthony's testimony was even more damning. Discussing the couple's December fight over the I.W.W. songbook, he stated that not only was Mabel the aggressor in the dispute, but also that she had never been knocked out, as she had previously testified. Duncan expressed disbelief that Anthony was an eyewitness to the events, but he was unable to disprove the story.

Warren was the last person to take the stand. He flatly denied that he had ever abused Mabel and, unsurprisingly, insisted that he was appalled by her political and religious views. Warren reaffirmed that he, rather than his wife, was primarily responsible for their children, telling the court: "I had to be more or less the father and

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<sup>50</sup> Ibid., 150-51.

<sup>51</sup> Ibid., 171.

<sup>52</sup> Ibid., 188.

<sup>53</sup> Ibid., 203, 205.

mother and nurse girl to the first child and the second.”<sup>54</sup> But if Warren was undertaking women’s work by becoming the children’s caretaker, it was only because Mabel had failed as a mother. Warren believed that as the head of the Eaton household, he had the right to determine if his wife was doing a satisfactory job. Because she was not, he wanted to exercise his paternal imperative to deny her access to the children.

Advisory Master Grosman agreed with Warren. Several days after the conclusion of the testimony, Grosman filed a “Memorandum” in the matter. In his decision, he dismissed Mabel’s case and demonstrated clear sympathy for her estranged husband. Concerning the July 1934 fight, for example, he wrote: “I am satisfied that the petitioner did not suffer any great injury on this occasion and furthermore that she provoked the defendant to act as he did by her insistence upon creating a public scene and thus humiliating him before strangers.”<sup>55</sup> Grosman argued that Mabel had “studiously and purposely rendered herself absolutely unfit to be a wife to a man of the defendant’s physical, mental and moral makeup.”<sup>56</sup> He thereby granted the divorce to Warren and found that Mabel was solely responsible for the demise of the Eatons’ marriage.

Grosman then turned to the issue of child custody. His dislike for Mabel, and her beliefs (as he interpreted them), was palpable. He stated that there was “no question” in his mind that Mabel had “permitted herself to become thoroughly imbued with Communistic, Atheistic and I.W.W. doctrines even though she does not hold formal membership in these organizations.” Furthermore, Mabel had demonstrated herself to be un-American and thus an unfit mother. Grosman asserted that it was “common

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<sup>54</sup> Ibid., 239.

<sup>55</sup> “Memorandum,” 298. The memorandum would be followed, at a later date, by the Advisory Master’s official decision.

<sup>56</sup> Ibid., 298-99.

knowledge” that the principles of communism were “the antithesis of those generally held by most Americans.” Elaborating, he expressed his conviction that communists (and, by extension, Mabel) scoffed “at the belief in a Supreme Being, in the brotherhood of man, the virtue of women, the marriage institution, as well as the personal relations between parent and child.”<sup>57</sup> He was particularly incensed that Mabel refused to raise her children as her husband desired. Grosman did allow that Mabel could visit the children, but only if she refrained “from attempting to instill her Atheistic and Communistic beliefs in their minds.” When Grosman laid out the specific terms of the visitation schedule (which were, in fact, quite generous) in late February, he reiterated this stance, explaining that Warren could ask the court to limit Mabel’s time with Mabel Florence and Warren Jr. if her behavior was “subversive to the best interests and welfare of said children.”<sup>58</sup>

Throughout the divorce proceedings, competing visions of how parents, and particularly mothers, should act were on display. Mabel believed that as long as her house was clean and the children were cared for, she had a right to explore her own interests. She may well have even thought that expanding her intellectual horizons made her a better parent, one who was fully equipped to raise her offspring in the modern world. She thus concurred with those emerging critics who questioned the benefits of all-consuming mother love.<sup>59</sup> Warren, obviously, disagreed. He believed that a proper mother acted in accordance with her husband’s values. When Grosman concurred with Warren’s perspective, Mabel learned that a mother’s “right” to her children was considerably more fragile than she may have anticipated at the beginning of the trial.

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<sup>57</sup> *Ibid.*, 299.

<sup>58</sup> *Ibid.*, 300; Quoted in “Mrs Eaton to Visit Her Children Daily,” *Newark Ledger*, Feb. 28, 1936, Eaton Clippings. According to the article, Mabel was allowed to see her children from 3:30-6:00pm on weekdays, 9:00am-7:00pm on Saturdays, and 1:00pm-6:00pm on Sundays.

<sup>59</sup> Plant, *Mom*.

If the Advisory Master had simply stated that it was in the best interests of Mabel Florence and Warren Jr. to remain in the custody of their father, his decision would have likely gone unnoticed by the press and others. His direct references to Mabel's political and religious views, however, clearly infringed upon her constitutional rights to freedom of speech and of religion. Roger Shaw, an editor of the progressive journal *Review of Reviews*, immediately expressed his concern over Mabel's "shocking" story to the ACLU. In a January 30 letter, he asked: "Since when has Christianity become our state religion, and since when has it become immoral to have a Marx-Engels Manifesto in the home? . . . Think of those endangered children, exposed to all the horrors of eighteenth-century enlightenment."<sup>60</sup> Roger Nash Baldwin assured Shaw that the organization was already working on the "New Jersey atheist case."<sup>61</sup>

Mabel's situation appeared to be tailor-made for the ACLU. Because the trial had taken place in close proximity to the organization's national headquarters in New York City, it came to the group's attention soon after Grosman rendered his verdict. More important, by the mid-1930s, the ACLU (founded in 1920) had established itself as a staunch defender of freedom of expression, among other rights, in the United States. While many of the organization's leaders were involved in or sympathetic to radical causes, the group had also started to court a more mainstream, liberal membership base, with an eye towards attracting donors.<sup>62</sup> Baldwin nevertheless worried that Mabel would be reluctant to receive aid from an organization that many Americans associated with radicalism, particularly given the nature of the charges against her. He enlisted John

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<sup>60</sup> Roger Shaw to the ACLU, Jan. 30, 1936.

<sup>61</sup> Copy of reply to Roger Shaw, Jan. 30, 1936.

<sup>62</sup> Samuel Walker, *In Defense of American Liberties: A History of the ACLU* (New York: Oxford University Press, 1990), chapter 4; Judy Kutalas, *The American Civil Liberties Union and the Making of Modern Liberalism, 1930-1960* (Chapel Hill: University of North Carolina Press, 2006), chapter 1.

Haynes Holmes, the pastor of the Community Church of New York and an ACLU board member, to write Mabel in order to assuage any doubts that she might have about an ACLU-assisted appeal.<sup>63</sup>

Baldwin's concerns were unfounded, although Mabel did turn down a similar offer from the American Association for the Advancement of Atheism.<sup>64</sup> In fact, even before Holmes contacted Mabel, she was in the process of sending her own overwrought missive to Baldwin. Calling herself "an accused mother" who had been treated "worse than a criminal" by her ex-husband and the legal system, Mabel emphasized her kinship with the ACLU's mission. She assured Baldwin: "when the facts of Mr. Eatons [sic] assaults on me are broadcasted from coast to coast, I think they will give a vivid picture of the struggle I carried on in my house to retain my rights of freedom of conscience and expression."<sup>65</sup> Mabel did not shy away from the limelight. If anything, she aspired to become a cause célèbre, hoping that she would not only win custody of her children but also recognition for her fight against conservative values on the national stage.

The media also responded quickly to Mabel's situation, probably prompted by the ACLU's interest and publicity apparatus. Much of the press coverage focused on the question of whether or not someone who held left-wing beliefs could be a "good" mother to her children. The majority of early headlines assumed that Mabel was a leftist, labeling her as an "Atheist," "Radical," or "Communitistic" mother.<sup>66</sup> Some reporters roundly

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<sup>63</sup> Draft of letter from Roger Nash Baldwin to John Haynes Holmes, Feb. 3, 1936.

<sup>64</sup> "Help Offered Mrs. Eaton," *Newark Ledger*, Feb. 10, 1936, Eaton Clippings. The ACLU, it seems, was the less radical of Mabel's choices for legal aid.

<sup>65</sup> Mabel Eaton to Roger Nash Baldwin, Feb. 4, 1936.

<sup>66</sup> "Communitistic Mother," *New York American*, Jan. 30, 1936, American Civil Liberties Union Records, The Roger Baldwin Years, Roll No. 135, Vol. 920, Seeley G. Mudd Manuscript Library, Princeton University [hereafter ACLU Clippings]; "Judge Takes Two Children from their Atheist Mother," *Pittsburgh Press*, Jan. 30, 1936, ACLU Clippings; "Radical Mother Planning Appeal," *New York Sun*, Jan. 30, 1936, ACLU Clippings. Occasionally the adjective before "mother" would be in quotes, indicating that

condemned Mabel for her alleged political beliefs. “Little Mabel and Warren Eaton of Montclair, N.J. are going to be allowed to grow up as Americans,” proclaimed the *New York Journal*, for instance.<sup>67</sup> A *Newark Call* editorial suggested that the Eaton children had “a right to the kind of training and home environment which will not expose them to the emotionally-dangerous ridicule and suspicion to which they would be subjected by marked difference from the ideas of associates being raised in conventional homes.”<sup>68</sup> The children, in other words, deserved a “normal” upbringing, which their mother could not provide. It only made sense, therefore, that they be raised by their father.

Other media outlets, however, were more sympathetic towards Mabel’s plight. Some journalists feared that Grosman’s decision violated core American values. In a widely reprinted editorial, for example, the *New York Times* asserted that even if the divorce and custody verdicts had been “warranted,” Grosman’s explication of the law “arouse[d] misgivings.” The newspaper cautioned: “It is not many steps from it [the decision] to such Nazi practices as granting a divorce to any married person whose spouse may be charged with not completely believing in the Nazi program.”<sup>69</sup> Maria Halberstadt, a German exile, also drew parallels between the case and Nazi policy, telling a Newark audience: “It is just what would happen in Germany. I thought in a civilized country, private opinion was respected and it was conceded it had nothing to do with bring up children.”<sup>70</sup>

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she was accused of this charge, rather than, in fact, a communist, atheist, or radical. An example is “‘Communist Mother’ Hides after Losing Two Children,” *New York Post* [hereafter *NYP*], Jan. 30, 1936, ACLU Clippings. Very few clippings include page numbers.

<sup>67</sup> “‘Red’ Charge Wins Jersey Man Divorce,” *New York Journal*, Jan. 30, 1936, ACLU Clippings.

<sup>68</sup> “Common Sense,” *Newark Call*, Feb. 2, 1936, Eaton Clippings.

<sup>69</sup> “Penalizing Opinions,” *NYT*, Jan. 31, 1936. For similar language see, “A Strange Case,” *Long Branch Record*, Jan. 31, 1936, ACLU Clippings; “A Parent’s Rights,” *Hartford Courant*, Feb. 5, 1936, ACLU Clippings.

<sup>70</sup> “Speaker Raps Eaton Case Decision,” *Newark Ledger*, Feb. 10, 1936, Eaton Clippings.

The ACLU's Baldwin broadened these sentiments even further, asking: "What opinions would a court hold unfits a parent for custody? In a strongly democratic [sic] community is a republican taboo as a parent? In the case of mixed marriages between parents of different religions is one to be punished for belonging to a minority sect?"<sup>71</sup> Similarly, another editorial cautioned: "Those who uphold Advisory Master Grosman's decision must, in consistency, advocate legislation to deny the right of parentage or custody over children to all men and women who do not subscribe to certain definite formulae concerning religion, politics and philosophy. The logical and inevitable conclusion of the point in view underlying the Eaton decision would be a state religion, a state political party, a state philosophy and, in fact, a totalitarian state."<sup>72</sup> From these perspectives, Mabel's case was about protecting the rights of all parents to have political opinions, even if they were out of step with those of their spouses or broader communities.

Other members of the press worried more specifically that the Eaton case would set a dangerous precedent "for taking children from mothers."<sup>73</sup> The *Asbury Park Evening Press*, for instance, declared liberty to be at a "new low" and argued: "a mother's children being her most cherished possession, the advisory master has, in effect, denied her the liberties that should be inalienable to every American."<sup>74</sup> The *Buffalo Times* editorialized: "mothers of all creeds and none, and of all shades of political opinion, ought to stand together against this Newark decision."<sup>75</sup> A *New York Post*

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<sup>71</sup> Quoted in "Custody of Child Put on Ground of Moral Training," *Christian Science Monitor*, Jan. 30, 1936, ACLU Clippings.

<sup>72</sup> "Blow to Freedom: The Eaton Decision," [newspaper unknown, n.d.], Eaton Clippings.

<sup>73</sup> "Civil Liberties Union Offers Aid to Mother Warned on Radicalism," *Newark News*, Jan. 30, 1936, ACLU Clippings.

<sup>74</sup> "Liberty at a New Low," *Asbury Park Evening Press*, Jan. 31, 1936, ACLU Clippings.

<sup>75</sup> "Politics and Motherhood," *Buffalo Times*, Jan. 31, 1936, ACLU Clippings.

reporter turned the tables and likened Grosman to a communist, explaining: “One of the evil things Russian Communists do, so we’ve been told, is to use the power of the state to snatch children from the arms of their mothers. The very thought of such a practice fills us with abhorrence. But what are we to think when Red scare hysteria, in the person of Advisory Master in Chancery Grosman, snatches two children from their mother and awards them to their father.”<sup>76</sup> A woman’s right to raise her children was thus akin to other constitutional protections and denying that right was un-American.

Abstract defenses of motherhood, however, became more complicated when journalists had to grapple with the real-life players in the Eaton case. While they largely ignored Warren, reporters were fascinated—and confused—by Mabel. On the one hand, she seemed to be an immoral, and perhaps even crazed, woman. Grosman, for instance, told an interviewer that Mabel had “no regard for the virtue of women, in or out of wedlock.”<sup>77</sup> He also said that she “had the look of a tiger cat.”<sup>78</sup> The suggestion that Mabel was a predator, stalking her own children’s morality, was unmistakable. On the other hand, some accounts described Mabel as a “grief-stricken” and “heartsick” woman who was understandably distraught about her fate.<sup>79</sup> Bertram Duncan (whom Mabel would soon fire) told the press that his client “was so shocked, so stunned by the decision that her children had been taken away from her, that she couldn’t even talk to me.”<sup>80</sup>

The *New York Post* was particularly sympathetic to Mabel. The newspaper sent a reporter to Mabel’s pre-trial address—a “respectable” boardinghouse—and found that

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<sup>76</sup> “Jersey Justice Has the Jitters,” *NYP*, Feb. 1, 1936, ACLU Clippings.

<sup>77</sup> “‘Radical’ Mother Wins Holmes Aid,” *NYP*, Jan. 30, 1936, ACLU Clippings.

<sup>78</sup> “Tiger Cat,” *Time*, Feb. 10, 1936, 51

<sup>79</sup> “Storm of Protest Follows Decision Taking Children from Mother,” *Newark Ledger*, Jan. 31, 1936, ACLU Clippings; “‘Wrong Ideas,’ So Kids Taken from Mother,” *Oklahoma City American Guard*, Feb. 7, 1936, ACLU Clippings.

<sup>80</sup> “Storm of Protest,” *Newark Ledger*.

neighbors considered her to be a “quiet, refined woman.”<sup>81</sup> The next day, the *Post* published a lengthy account of the testimony, intended to demonstrate that Grosman had misrepresented Mabel’s views.<sup>82</sup> Mabel attempted to take further control of her image when she met with several understanding reporters in late February. A resultant piece in the *Post* portrayed her as an “everywoman” who “like many American housewives and clubwomen, wanted to improve her mind.” The article concluded that Mabel’s fight for custody needed to be “the fight of every clubwoman.”<sup>83</sup>

At this juncture, Mabel had clearly decided that she was going to get much more public support for being a wronged mother than for being a free speech advocate. She began to shy away from radical statements and instead emphasized that her political views were moderate. Mabel now claimed to have voted for New Jersey’s Republican governor and said that she did “not even whole-heartedly endorse the Roosevelt administration.”<sup>84</sup> And yet, Warren persisted in calling her a “radical red nut like Roosevelt.”<sup>85</sup> She additionally contrasted her broad views of childrearing with Warren’s narrow ones, telling the *Newark Ledger* that she wanted her children “to be brought up with open minds,” even if they did turn out to have conservative political views.<sup>86</sup> She stressed the strength of her feelings for her children, making plaintive statements such as: “My son will really miss me the most because he is at the age when he needs a mother’s love.”<sup>87</sup> In this manner, she acknowledged the continuing hold of the notion that mothers

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<sup>81</sup> “‘Communist’ Mother Hides after Losing 2 Children,” *NYP*.

<sup>82</sup> “‘None of Us Knows Who God Is,’ Says Wife Judge Called Atheist,” *NYP*, Feb. 1, 1936, ACLU Clippings.

<sup>83</sup> “‘Atheist’ Mother Asks Clubwomen’s Support,” *NYP*, Feb. 18, 1936, ACLU Clippings.

<sup>84</sup> *Ibid.*; Sue Gardner, “Modernism Her ‘Sin,’ Mrs. Eaton Pleads,” *Newark Ledger*, Feb. 18, 1936, ACLU Clippings.

<sup>85</sup> Gardner, “Modernism Her ‘Sin.’”

<sup>86</sup> *Ibid.*

<sup>87</sup> “‘Atheist’ Mother,” *NYP*.

should always put their children's needs ahead of their own. Mabel thus attempted to become the mother that she believed the American public wanted her to be: dedicated to her children, intellectual, but not too political.

It is difficult to measure how much Mabel's interviews galvanized American women, although a rally in March did bring together 350 parents who were reported to "deplore" Grosman's ruling. (The fact that the gathering was sponsored by the Newark chapter of the American League against War and Fascism, which had ties to the American Communist Party, probably did little to change conservatives' minds about Mabel's cause.)<sup>88</sup> Her legal situation, at this point, was also somewhat murky. During one of her February interviews with the *Post*, Mabel expressed misgivings about working with the ACLU and seemed to hold out some hope that women's groups would come to her defense.<sup>89</sup>

The ACLU nevertheless moved forward, looking to bring in some "prominent" attorneys to lend firepower to Mabel's appeal.<sup>90</sup> Abraham J. Isserman, a New Jersey attorney and ACLU stalwart, was active on the case from the start. Together with Baldwin, he convinced John Larkin Hughes, who practiced law in Newark, to lead the legal team.<sup>91</sup> They also set out to raise funds for the appeal, after having promised Mabel that the ACLU would cover her legal costs.<sup>92</sup> A solicitation for aid went out in May 1936 and a number of concerned citizens responded by sending in their own donations and by

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<sup>88</sup> "350 Parents Deplore Court Ruling Depriving Mrs. Eaton of Children," *Newark News*, March 21, 1936, ACLU Clippings.

<sup>89</sup> "Atheist Mother," *NYP*.

<sup>90</sup> Samuel P. Puner to Mabel Eaton. Feb. 10, 1936.

<sup>91</sup> Roger Nash Baldwin, Memorandum re: Eaton Case, April 21, 1936; Roger Nash Baldwin to John Larkin Hughes, May 1, 1936.

<sup>92</sup> Copy of Roger Nash Baldwin to John Haynes Holmes, Feb. 3, 1936.

providing the names of other potential contributors.<sup>93</sup> Mabel's story plainly resonated with some of the organization's wealthier donors. Elizabeth Lowe Gamble, whose husband was an heir to the Proctor and Gamble fortune, wrote to Baldwin that the case had "bothered me ever since I read of it in the paper" and pledged her fundraising support. In return, he wrote that Mabel was "in a tragic and pathetic state" and outlined the expenses, which included \$250 for the court record and considerably more in attorneys' fees.<sup>94</sup>

By late June, the ACLU had also distributed a pamphlet, "The Strange Case of Mrs. Eaton," with an eye to collecting even more money. It contained portions of Mabel's testimony, which the organization claimed were "a complete refutation of the charges of 'Communism and atheism' brought against Mrs. Eaton." The text contended that even if Mabel did hold radical beliefs, "depriving a mother of her children on such a ground alone would be indefensible."<sup>95</sup> In explaining the situation to Gamble and to the larger membership, the ACLU clearly believed that focusing on Mabel's predicament as an aggrieved mother, rather than as a victim of red-baiting, would open the most pocketbooks. Relatively traditional views of motherhood held sway even amongst the donors to the liberal ACLU. The group's fundraising efforts were successful; by late July the organization had raised enough money to pay for the appeal.<sup>96</sup>

As the appeals process progressed, Mabel continued to have lingering concerns about the ACLU's handling of the case. One issue was the organization's insistence on focusing solely on the custody case, rather than including the divorce decree—as Mabel

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<sup>93</sup> See, for instance, Copy of Roger Nash Baldwin to Mr. R.C. Gross, May 30, 1936.

<sup>94</sup> Elizabeth Lowe Gamble to Roger Nash Baldwin, May 15, 1936; Roger Nash Baldwin to Elizabeth Lowe Gamble, May 21, 1936.

<sup>95</sup> "The Strange Case of Mrs. Eaton."

<sup>96</sup> Copy of Lucille B. Milner to Willis Thornton, July 24, 1936.

preferred—in the appeal. Justifying this position, Baldwin appealed to Mabel’s presumed sense of sisterhood with other women and argued that custody was “the issue which distinguishes your case from all others and on which you would render a service to other mothers in taking an appeal.”<sup>97</sup> Mabel ultimately won this round, thanks to the legal technicalities of her case. Finding that the two issues impossible to separate, the ACLU reluctantly agreed to tackle the divorce decree, while only publicizing the custody angle. Hughes, in particular, resented Mabel’s interference. In early June 1936, for example, he wrote Baldwin: “I have the opinion that Mrs. Eaton will prove a difficult client. The case, with the personal trouble involved, has preyed on her mind and she is obsessed with the conviction that she has been oppressed and made an outstanding public victim of injustice.”<sup>98</sup> Baldwin’s answer to Hughes indicated that he shared a similar distaste for Mabel’s temperament, stating that she probably was difficult by nature and that “her recent experiences have not improved her disposition.”<sup>99</sup> He also questioned Mabel’s intelligence. (Baldwin was, according to historian Judy Kutulas, prone to sexism.)<sup>100</sup>

Both Hughes and Baldwin, then, were displeased when Mabel tried to influence the direction of the case. In public, they wanted her to be an anguished mother and in private, they wanted her to be an appreciative, docile client. Instead, she was an energetic advocate who questioned their decision making when she disagreed with their legal strategies. Later in June, Isserman nevertheless expressed the somewhat patronizing hope that he could “persuade her to allow us to handle the appeal in the manner which we

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<sup>97</sup> Copy of letter from Roger Nash Baldwin to Mabel Eaton, Feb. 18, 1936.

<sup>98</sup> John Larkin Hughes to Roger Nash Baldwin, June 5, 1936.

<sup>99</sup> Copy of Roger Nash Baldwin to John Larkin Hughes, June 8, 1936.

<sup>100</sup> Kutulas, *American Civil Liberties Union*, 33, 76.

think is for her best interests.”<sup>101</sup> The ACLU—and not Mabel—in other words, knew what was “best” for her. The legal team actively attempted to minimize Mabel’s participation while still hoping to garner positive publicity by winning her case.

Mabel, however, refused to be sidelined and continued to push the ACLU to work on the case “her” way. On June 30, for instance, she described the ACLU’s efforts to obtain spousal support from Warren as “too humiliating” and indignantly likened their bullying line of questioning about her finances to Warren’s past behavior. She also criticized the ACLU’s publicity apparatus, observing: “My case from many angles is a source of interest to the most conservative and radical minds that know me personally and wonder is expressed that no public mention of the appeal has been made.”<sup>102</sup> Mabel was not incorrect; media coverage of the case had all but died out after March. Baldwin, knowing that he needed Mabel’s cooperation, wrote a particularly conciliatory response to this communication. A news release went out soon thereafter.<sup>103</sup> But if Mabel and Baldwin had reached a stalemate, Hughes continued to be frustrated by the situation. Mabel repeatedly failed to show up for meetings; at one point, she left for a ten-day vacation without informing Hughes that she would be out of town.

When Hughes filed the first documents of Mabel’s appeal in late August, the case found its way back into the newspapers in the New York area. The appeal alleged that Grosman’s decision was based on “matters and reasons not supported or warranted on

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<sup>101</sup> Abraham J. Isserman to Roger Nash Baldwin, June 25, 1936.

<sup>102</sup> Mabel Eaton to Roger Nash Baldwin, June 30, 1936. I have been unable to find Mabel’s correspondence with individuals and organizations outside of the ACLU. In one interview, she claimed to have received almost seven thousand letters about the case. See “Wife Barred from Children to Take Her Case to the People,” *NYP*, Aug. 28, 1936, ACLU Clippings.

<sup>103</sup> Copy of Roger Nash Baldwin to Mabel Eaton, July 1, 1936; ACLU Press Service, “Pamphlet on Eaton Case in New Jersey Now Available,” Bulletin #722, July 10, 1936, American Civil Liberties Union Records, The Roger Baldwin Years, Roll No. 139, Vol. 943, Seeley G. Mudd Manuscript Library, Princeton University.

evidence.”<sup>104</sup> It claimed that Grosman had violated Mabel’s rights under the New Jersey state constitution as well as the equal protection clause of the federal Constitution. Mabel eagerly spoke with reporters, particularly seeking to explain why she had not visited with her children since January. She said that she simply could not “bear the thought of seeing Mr. Eaton again,” but that she nevertheless missed her children deeply. Mabel wistfully told a reporter from the *New York Post*: “It seems as though my life just stops when I don’t see them. I have to get them back. I love them so.”<sup>105</sup> Similarly, she spoke to another journalist about her sadness at missing Warren Jr.’s birthday and explained: “He’s a real dream baby. Of course, all mothers say that I guess but he has happiest smile on his lips and curly tan hair.” Mabel, however, now had “graying hair,” presumably caused by the toll of her separation from her beloved children.<sup>106</sup>

Mabel thus completed the transformation that she had begun after the trial. Her public persona was now a far cry from the assertive woman who had taken the witness stand back in January. Indeed, she now even claimed that someone had tampered with the official record in order to distort her testimony.<sup>107</sup> Mabel’s prowess as a housewife and mother, rather than as an intellectual, was now on display. While the *Post* piece did call Mabel a “heroine,” for example, it also expressed amazement that “this woman who was a housewife, and a careful mother to her children” had learned to type. (Ironically the same paper had reported in February that “before her marriage she [Mabel] was head of an office and an expert typist and bookkeeper.”)<sup>108</sup> Another journalist breathlessly

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<sup>104</sup> “Appeal Is Filed on Mother’s Rights,” *NYT*, Aug. 26, 1936, ACLU Clippings.

<sup>105</sup> “Wife Barred from Children,” *NYP*.

<sup>106</sup> William A. Birnie, “‘All I Want Is to Have My Children Back,’” *New York World-Telegram*, Sept. 26, 1936, ACLU Clippings.

<sup>107</sup> “Wife Barred from Children,” *NYP*.

<sup>108</sup> “‘Atheist’ Mother Asks Clubwomen’s Support,” *NYP*.

reported that when the “house girl” employed by Mabel’s sister had made several queries about how to cook a roast, Mabel had provided “competent suggestions.” Mabel concluded this interview by pleading: “Don’t make me out as trying to save the world or reform the United States or anything else. All I’m interested in right now is having my children again. I need them. I think they need me too.”<sup>109</sup> Mothers, Mabel had learned, were heard the loudest when their chosen subject of discussion was their children, and decidedly not politics or religion.

Mabel’s media blitz did not smooth things over with the ACLU. She was obsessed with the idea that Warren and his witnesses had committed perjury and that the ACLU should use this evidence in the appeal. In mid-September, she wrote Baldwin an irate and somewhat incoherent letter in which she insisted that he pay attention to this issue.<sup>110</sup> Baldwin, in reply, dismissed her worries—noting that he did not think that the trial record was as “bad” as she did—and begged her to continue on because she owed “a service to other mothers in taking appeal from so extraordinary a decision.”<sup>111</sup> Mabel became increasingly erratic. She insisted in a meeting with the legal team that she wanted an entirely new hearing and would not appeal on the existing record. She later sent a telegram adamantly insisting that the appeal go forward. Because of her vacillations, the ACLU determined that it could not finalize the paperwork for the appeal in October, as the lawyers had been previously planned.<sup>112</sup>

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<sup>109</sup> Birnie, ““All I Want Is to Have My Children Back.””

<sup>110</sup> Mabel Eaton to Roger Nash Baldwin, Sept. 16, 1936.

<sup>111</sup> Copy of Roger Nash Baldwin to Mabel Eaton, Sept. 17, 1936.

<sup>112</sup> Sol D. Kapelsohn to John Larkin Hughes, Oct. 5, 1936; “Memorandum,” Sept. 30, 1936, American Civil Liberties Union Records, The Roger Baldwin Years, Roll No. 139, Vol. 943, Seeley G. Mudd Manuscript Library, Princeton University.

Baldwin was livid about this turn of events and let Mabel know it. He wrote her that if the ACLU's request for an extension failed: "you have no one to blame but yourself for refusing for so long to consider pushing the appeal of a record you thought could be changed."<sup>113</sup> Mabel did not take kindly to this assertion and claimed that the ACLU and its lawyers were responsible for the problem. She outlined numerous delays on their part and expressed indignation at how she had been treated. She decided that it was best to sever ties with the ACLU.<sup>114</sup> Baldwin, however, would not let the issue die. He firmly believed that any delays were Mabel's fault and that she had cost the ACLU valuable time and money. Baldwin knew that the media was following Mabel's case closely—at one point, Isserman had mentioned that he was receiving "several calls a day" from the Associated Press about the status of the appeal—and both men clearly wanted to make sure that the organization came away from the debacle with its reputation intact.<sup>115</sup> The ACLU did its best to protect itself in the press. When Isserman finally spoke on the record, he explained that the organization was still "deeply interested" in Mabel's case but that she "had refused to cooperate" with the appeal.<sup>116</sup> Similarly, the official press release on the matter stated: "The Civil Liberties Union has offered to aid her [Mabel] in every way possible but has withdrawn from any responsibility in conducting the case."<sup>117</sup>

Mabel faced several new challenges. As her relationship with the ACLU was deteriorating, Grosman had filed his official opinion with the New Jersey Court of Errors and Appeals. The opinion once again brought Warren's side of the story into the public

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<sup>113</sup> Copy of Roger Nash Baldwin to Mabel Eaton, Oct. 6, 1936.

<sup>114</sup> Mabel Eaton to Roger Nash Baldwin, Oct. 12, 1936.

<sup>115</sup> Abraham J. Isserman to John Larkin Hughes, Oct. 8, 1936.

<sup>116</sup> Associated Press, "Mrs. Eaton Refuses Civil Liberties Aid," *Newark News*, Oct. 21, 1936, ACLU Clippings.

<sup>117</sup> "For Immediate Release," Oct. 24, 1936, American Civil Liberties Union Records, The Roger Baldwin Years, Roll No. 139, Vol. 943, Seeley G. Mudd Manuscript Library, Princeton University

eye, highlighting what Grosman labeled as Mabel’s “unmitigated brutality” towards her husband. He further asserted that she had “seemingly missed no opportunity to revile God, Christ, the Church, the American system of government and standard of morals.”<sup>118</sup> He thus felt justified in ruling that Mabel was not the “proper person to be entrusted with their [her children’s] upbringing.”<sup>119</sup> It prompted the *New York American* to run a photograph of a smiling Mabel with the question “Unfit?” above the picture.<sup>120</sup> While the question could be viewed as sympathetic—Mabel hardly looked “unfit”—it nevertheless contradicted to the carefully crafted image that she had been presenting to the press for months.

In the midst of this turmoil, the deadline for extending her appeal had passed. Mabel hired a new lawyer, a noted divorce attorney, named Lucille Pugh.<sup>121</sup> After her experience with the male-led ACLU, it is unsurprising that Mabel now sought out female counsel. In petitioning for the continuance, Pugh called upon the court’s paternalistic impulses, claiming that Mabel was “destitute and ill” because of the “rigors of litigation.” She also submitted an affidavit from Mabel’s physician that she needed “expert care” in order to avoid a “complete collapse.”<sup>122</sup> In the press, Mabel blamed the delay on the ACLU, explaining that “although the American Civil Liberties Union had undertaken her

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<sup>118</sup> “Opinion,” NJCEA, 306, 307; “Divorce Is Appealed by ‘Atheistic’ Mother,” *NYT*, Oct. 21, 1936, ACLU Clippings; “Man Hits Wife’s Appeal from ‘Atheism’ Degree,” *New York Herald-Tribune*, Oct. 21, 1936, ACLU Clippings.

<sup>119</sup> “Opinion,” 309.

<sup>120</sup> “‘Red’ Mother in Court Fight for Children,” *New York American*, Oct. 21, 1936, ACLU Clippings.

<sup>121</sup> On Pugh’s reputation, see “Private Lives,” *Life*, Nov. 15, 1937, 112.

<sup>122</sup> “Bronx Mother, Denied Custody of Children Because ‘Red,’ Asks More Time to Appeal,” *New York Bronx Home News*, Oct. 27, 1936, ACLU Clippings; “Plea for Children by ‘Red Mother,’” *New York Mirror*, Oct. 27, 1936, ACLU Clippings.

appeal, nothing had been done.”<sup>123</sup> The court ultimately decided to allow Mabel to file her continuance.<sup>124</sup>

Lacking the ACLU’s financial support, Mabel now tried to raise funds on her own, notably by distributing a pamphlet, “The Eaton Case.” The cover featured a photograph of Mabel Florence and Warren Jr. in happier days. At the top left-hand corner, there was a headshot of Mabel, looking down so that it appeared that she was lovingly watching her children from above. The text underneath these images claimed that Mabel’s loss of the children was “her sentence to die.” The pamphlet described Mabel’s charges of cruelty against Warren and concluded with an impassioned request for money, explaining: “My victory will be a great step to destroy perjury in our courts, religious persecution and the victory of Democracy over Fascism with my chance to live the truth as I see it.” In this manner, Mabel shrewdly appealed to two different sets of potential supporters: those who believed that a mother should not be separated from her children and those who worried about encroaching threats to democracy.<sup>125</sup>

Yet another set of attorneys, Samuel L. Rothbard and Murray Freeman, helped Mabel with her appeal before the Court of Errors and Appeals in early 1937.<sup>126</sup> In their brief, the new legal team immediately focused on the damage that Grosman’s decision could have on American families, especially mothers. They dramatically claimed: “Motherhood has never in all its history before been in such danger.”<sup>127</sup> The brief held that even if Mabel were an atheist and a communist, which her lawyers strenuously

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<sup>123</sup> “‘Red’ Mother Renews Fight for Children,” *New York Daily News*, Oct. 27, 1936, ACLU Clippings.

<sup>124</sup> “Communication from Clerk of Court of Errors and Appeals,” NJCEA, 321.

<sup>125</sup> “The Eaton Case,” Eaton Clippings. It is unknown if this appeal was successful in raising funds for Mabel.

<sup>126</sup> Why she dismissed Pugh and how she found this new team is unknown.

<sup>127</sup> “Brief of Petitioner-Appellant,” NJCEA, 2.

denied, she still should have retained custody of her children, expressly because she was a mother. They elaborated: “Mother love is a dominant trait in even the weakest of women, and, as a general thing surpasses the paternal affection of a common off-spring and moreover, a child needs a mother’s care even more than a father’s.”<sup>128</sup>

Warren’s brief focused on the idea that custody decisions should be based on the welfare of the children. Mabel’s mothering—or lack thereof—was the key issue. It condemned Mabel’s maternal instincts, noting: “Not since the trial of the case, on January 22, 1936, one year ago, has this mother taken advantage of her liberal rights of visitation. Not a card or a gift at the holiday, but constantly during the year has she been in the newspapers of New York and New Jersey with sob stories and with printed *pleas for financial aid to carry on her appeal*.”<sup>129</sup> Warren, however, was a “kindly and loving father” who would “endure almost anything for himself, but for the children’s welfare, he would slave and sacrifice his all.”<sup>130</sup> Left unwritten, but heavily implied, was that Warren was not only a better parent than Mabel, but also that his degree of “father love” surpassed her maternal feelings for the children.

The Court of Errors and Appeals unanimously decided to uphold the divorce decree and the custody arrangement on April 30, 1937. The court gave little indication as to why it had done so, but the justices did claim that Mabel’s beliefs were “irrelevant” to the case.<sup>131</sup> Following the ruling, Mabel and her allies talked about bringing her case to the Supreme Court.<sup>132</sup> The Freethinkers of America, for example, hosted a dinner in

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<sup>128</sup> *Ibid.*, 56.

<sup>129</sup> “Brief on Behalf of Defendant-Respondent,” NJCEA, 11-12. Emphasis in the original.

<sup>130</sup> *Ibid.*, 23.

<sup>131</sup> *Eaton v. Eaton*, Court of Errors and Appeal of New Jersey, 122 N.J. Eq. 142; 191 A. 839; 1937 N.J. LEXIS 580. <http://web.lexis-nexis.com/universe>. Accessed August 9, 2010.

<sup>132</sup> “Mrs. Eaton Loses Fight for Children,” *NYT*, May 1, 1937; “Mrs. Eaton to Appeal,” *Newark Ledger*, May 1, 1937, Eaton Clippings.

Mabel's honor at the Town Hall Club in New York City and vowed "to help correct this frightful wrong" by pursuing further legal action.<sup>133</sup> At the event, Mabel promised to continue her fight, explaining to the sympathetic crowd (which even, remarkably, included Roger Nash Baldwin): "New Jersey in taking away my children actually sentences me to death."<sup>134</sup> Despite her strong words and the evident support for her cause, however, Mabel's case ended with the Court of Errors and Appeals decision. Her lawyers probably surmised that further appeal would not yield a different result. It is not clear that Mabel would have fared any better in her appeal if the ACLU had continued on the case. But by failing to resolve their differences, both sides lost. In the end, Mabel did not have her children and the ACLU had wasted time and resources without anything to show for the effort.

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Mabel, Warren, and the children soon vanished from the public record. Warren clearly hoped for this outcome, explaining in a rare interview: "The children and I have had too much publicity. We'll be glad [sic] to get along together just on our own."<sup>135</sup> Mabel settled in New York, worked to support herself, and died of colon cancer in 1947. According to the Eaton family, she never saw or communicated with the children or her ex-husband again.<sup>136</sup> This fact stands at odds with the carefully crafted maternal image that she had built over the course of 1936. Perhaps it really was just an "image" and Mabel craved public attention more than a genuine relationship with Mabel Florence and Warren Jr. It is also possible she could not bring herself to attend supervised visits with

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<sup>133</sup> Quoted in "Jersey Justice Assailed at Dinner Freethinkers Give for Mrs. Eaton," *Newark News*, [May?] 28, 1937, Eaton Clippings.

<sup>134</sup> Ibid.

<sup>135</sup> Untitled article, [n.d.], Eaton Clippings.

<sup>136</sup> Telephone conversation with Susan Freudenberg (the Eatons' granddaughter) on August 25, 2010.

the children under the watchful eye of an ex-husband who she believed to be abusive. Or, Warren may have blocked any attempts that Mabel made to contact her daughter and son. While it is impossible to know why Mabel did not see the children, the outcome was the same: Mabel Florence and Warren Jr. grew up without their mother in their lives. Warren, who did not remarry, raised the children with support from his immediate family. To this day, the Eaton family believes that Grosman made the right decision by ensuring that Warren could raise the children in a Christian home.<sup>137</sup>

Just as the Eatons faded into obscurity, so too did the law associated with their case. The court's justification for denying custody to Mabel proved to be so convoluted and difficult to untangle that New Jersey lawyers and judges subsequently avoided citing it.<sup>138</sup> In fact, the fallout from the Eaton decision proved that requesting child custody explicitly based on one parent's objections to the other's religious and political beliefs was probably illegal. Ralph Taylor, a Philadelphia policeman, learned this lesson in December 1936. Despite allegations that Ralph's estranged wife Dora held "Communitistic beliefs," Judge Eugene V. Bonniwell refused to give him custody of their two children.<sup>139</sup> Future assaults on the tender years doctrine would therefore require other ways of questioning a mother's fitness to raise her children. At the same time, however,

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<sup>137</sup> Ibid..

<sup>138</sup> The New Jersey Supreme Court referred to the case dismissively in *In re: "E,"* New Jersey Supreme Court, 59 N.J. 36, 279 A.2d 785, 1971 N.J. LEXIS 159, <http://web.lexis-nexis.com/universe>. Accessed August 9, 2010. The case was also occasionally cited in law review journals: "Denial of Custody of Child to Parent Contemplating Expatriation," *Columbia Law Review* 48 (May 1948): 643-45; W. Dean Wager, "Political and Religious Differences as Grounds for Divorce. . .with the Accent on Communism," *Duke Bar Journal* 2 (Spring 1952): 139, 143-44; "Alternatives to 'Parental Right' in Child Custody Disputes Involving Third Parties," *Yale Law Journal* 73 (Nov. 1963): 159-60; "Parent and Child," *Harvard Law Review* 79 (June 1966): 1715; Ramsay Laing Klaff, "The Tender Years Doctrine: A Defense," *California Law Review* 70 (March 1982): 351.

<sup>139</sup> "Mother's Love Triumphs over Patriotism," *Newark Ledger*, Dec. 9, 1936, Eaton Clippings.

American women were put on alert that they could not always count on getting custody of their children in the case of contested divorce.

Even if the case did not set convincing legal precedent, the Eaton decision, and the publicity it generated, exposed the contested politics of the family and the nation during the Great Depression. Both Warren and Mabel played upon and were influenced by larger anxieties about parenting during this time of unprecedented economic crisis. Warren wanted to take over the mothering of the Eaton children at a time in which many Americans were concerned about the emasculation of the country's men. To allay these anxieties, he sought his divorce, argued for child custody, and won both, in the name of protecting patriarchal authority within the home.

Mabel faced even more obstacles than Warren in navigating the complex gender terrain of the 1930s. Part of this difficulty was of her own making, because she had courted media scrutiny of her case. Her thorny relationship with the ACLU also complicated her situation. But, most important, Mabel struggled to be an independent woman at a time in which many Americans, even liberals, still believed that a mother's single-minded focus should be on her children. Anxiety about women's seemingly growing autonomy certainly contributed to this conservative reaction. For Mabel, acting as mistress of her own soul and failing to embody the tenets of "mother love" had a steep price. With its potent combination of politics and motherhood, the Eaton case thus helped to redefine both in 1930s America.