

TOWARDS A THEORY OF RELATIONAL EQUALITY

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I. INTRODUCTION

As the basis for an account of what is required for women to become substantively equal, it is well to review some of the existing equalities and inequalities and to look at the ways many of the proposed solutions have failed to offer a meaningful account of equality for women. Dualistic modes of thought continue to prevail. Masculine and feminine are perceived as opposites, not as end points on a continuum. To be masculine is to display behaviours which clearly negate those associated with femininity. Thus men are presumed to be rational, women emotional; men are active and achievement oriented, women passive; men independent, women dependent. The tenacious hold of these constructs is clearly

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revealed in the construction of custody and access decisions.¹ The standards applied to men and women in ascertaining the best interests of the child are not only different, but classically gendered. Our public ideals as well are constructed from oppositions: liberty contrasted with constraint, independence and autonomy with dependence. Ideals such as liberty and independence are seen less as essential elements in human sociability and interdependence than as barricades against the real and imagined dangers community poses. Our public profession of tolerance and freedom of choice often denies full recognition of the destructive character of many of the value systems whose worth we appear unwilling to judge. Because ideals such as liberty and independence are the pre-eminent principles of public life, it is easy to forget why they are important. When liberty and independence are isolated from their counterparts of responsibility and sociability, the act of abstraction denies their social meaning.

Liberty, for example, is often perceived as freedom from constraint. It symbolises the entitlement of all individuals to act and express themselves without interference from others. Yet liberty can also be perceived in a very different way, as conferring, not freedom from constraint, but responsibility for one's actions and for the consequences which attend them. Seen this way, liberty is an essential precondition if people are to accept responsibility for themselves and others. Rousseau may well have meant something very like this when he spoke of forcing men to be free, forcing them to accept responsibility for their actions and the consequences of those actions.² Where liberty is turned inwards, directed solely towards the satisfaction of the desires of the moment, because it is wholly self-directed, because it constitutes a denial of community, it ceases to be creative and becomes destructive. Such people are not free, but rather captives of their own impulses and hence incapable of responsibility for themselves or others. Like liberty, independence is conventionally seen as near absolute self-reliance, as the ideal of individuals who are responsible only to themselves for their decisions and who are able to provide for their own needs unaided. The independent individual is one who is free to make his or her own way, whose success or failure depends solely upon his or her own actions and decisions.³ Like liberty, independence can be seen in a very different light. Independence is also a prerequisite for being dependable, for being the sort of individual who is likely to remain steadfast and neither fall prey to the impulses of the moment nor to pressure from others. Perceived in this light, principles such as these are not the antithesis of community, but a prerequisite for it. Liberty and independence, however, tend to stand alone in

1 For a discussion of the construction of gender roles in custody and access decisions see SS Berns 'Living Under the Shadow of Rousseau: The Role of Gender Ideologies in Custody and Access Decisions' 10 *UTLR* 233.

2 JJ Rousseau *The Essential Rousseau*, trans by Blair (1974) p 19-20.

3 HF Pitkin *Fortune is a Woman* (1984) p 2-22.

the public catalogue of ideals. Liberty without responsibility might be possible if each individual was alone in the universe, but under those conditions it would pass unremarked.⁴ Because people are not alone, but part of a web of social relationships, their freedom to make choices carries with it an obligation to accept responsibility for the world they create for others. Only those who are free to make choices and decisions can be held responsible for their actions and their decisions. That people often act without regard for responsibility does not absolve them from their obligations in this regard, but merely emphasises that people remain less than they have the capacity to become, remain potentially perfectible animals.

For all its defects, Rousseau's account is significant because it epitomises the failure of the attempt to base the public world wholly upon ideals of independence and liberty. Despite the intimate interrelationship of liberty and independence with responsibility and trust, the former have an enduring home in the catalogue of public standards, the latter have often been consigned to the home and to other forms of private community. Both are distorted by their isolation. According equality the primary place within the catalogue of public ideals fails to restore unity and coherence. Like liberty and independence, equality is ambiguous. It may be perceived either as a comparison or as a way of structuring human relationships. Equality as comparison demands a standard. One is not merely equal. One is equal to another individual or group along a particular dimension. The prevailing standard in countries such as the United States and Australia is white, comparatively affluent, and male. Thus a demand for equality is a demand by outsiders for the same access to the benefits of social cooperation as the currently privileged group. When women demand equality, they are asserting their likeness to men, demanding access to existing positions in the hierarchy together with the status and power they bring to their occupants. It is a demand to be treated as an equal. Equality can also mean something very different. Equality can also be seen as a mode of structuring human relationships, a demand that individuals be perceived, not as occupants of social roles or existing status relationships but as unique and valuable individuals each of whom contributes to the richness and diversity of the community as a whole and each of whom warrants respect and acknowledgment for that reason. Equality as relationship demands the reconciliation of public and private, the recognition that the same ideals are appropriate for all spheres of human activity. If such ideals as liberty, autonomy and individuality are critical principles of public life, they are equally central to private communities. People cannot affirm one set of standards in their public forums, and another in their private lives. To the degree that they do so, it is

4 The 'natural freedom' of Rousseau's pre-social man becomes, therefore, not freedom but a freedom, a state in which freedom is irrelevant.

proper to question whether they act out of commitment or out of prudence, or whether, perhaps, they lack the capacity to honour any standards whatsoever.

Even privacy, essential as it is to a fully human and meaningful life, becomes a mask for domination where it is marshalled in support of the present division between public and private. If, in theory, privacy safeguards people against the danger that their lives will be wholly open to the bureaucratic state, in practice it has often become a sword in the hands of those who exercise power, served to prevent inquiry and interference into the manner of its exercise. It protects the powerful against state intervention, not the powerless against either private abuse or state intervention. Seldom, if ever, has it been successfully invoked as a shield to protect the powerless. The privacy accorded home and family, for example, historically enabled men to exploit and, not infrequently, abuse women and children. Today, in Australia, privacy is publicly affirmed as a central value in the *Child Support (Assessment) Act 1979 (Cth)*, s 3(b), but it is a value which is substantively curtailed where the custodial parent receives a means-tested benefit. Effectively, the affluent are entitled to the benefit of privacy, the poor are not.

II. THE LIMITS OF LEGAL EQUALITY

Today women are approaching legal (although not economic or social) equality in jurisdictions such as Australia and the United States. As a matter of political and legal theory, although not fully as a matter of practice, women enjoy the same rights and duties under the law and the same political and civil rights and liberties as are enjoyed by men.⁵ Increasingly, laws are framed in gender neutral terms. While, in theory, this represents a major victory, in practice, it often simply means that women have been incorporated in the prevailing model of legal personhood. Equality as comparison prevails over equality as relationship. Despite such caveats, few mourn the gradual demise of traditional legal presumptions such as that declaring the domicile of the wife to be that of her husband.⁶ Such presumptions played a significant role in legally reinforcing the subordinate status of women and denying them access to privileges and benefits to which they would otherwise be entitled. If many women find it untenable to become men and citizens, at least, legally, woman is no longer the antithesis of person.

5 There are, of course, exceptions. In both Australia and the United States, women are denied the right to take part in combat while serving in the Armed Forces.

6 *Domicile Act 1981 (Cth)*. Significantly, presumptions concerning domicile remain part of the *Taxation Act 1936 (Cth)*. For the purposes of s 159J(3A) a dependent spouse or child shall by the definition of resident in s 6(1) be deemed to have a domicile in Australia at all times when the taxpayer has a domicile in Australia.

The tension between the egalitarian assumptions behind gender neutral laws and the inegalitarian reality of contemporary communities of belief and practice is manifest in debates over the legitimacy of demanding equal pay for work of equal value. In most jurisdictions, including Australia, the principle of equal pay for equal work is given legal force. Equal pay for work of equal value, or comparable worth, has been more difficult to attain because ascribing content to 'equal value' requires a normative judgment which seems difficult to sustain when it is contradicted by market forces. If it is argued that the value of labour and goods ought to be determined by market forces, equal pay for work of equal value becomes an empty idea. Establishing concrete meaning for equal value in a value free world is no easy task. Market forces are conventionally supposed to establish the *value* of goods and services through the interaction of preferences. While efforts are being made to find a way around this impasse, notably by deconstructing occupational task structures into their constituent elements and then arguing, element by element, that superficially different task descriptions require equivalent skill levels, change has been slow.

Likewise, it is difficult to believe that the discrepancy between the economic rent of traditionally female occupations and that of traditionally male occupations is simply a 'market imperfection'. Substantial inroads have been made in differential rates of pay predicated solely upon gender or upon marital status. Gender based occupational segregation has diminished only slightly, and the wage differentials associated with it remain entrenched. Just as individuals are perceived as masculine or feminine, task structures are also gendered. Certain tasks remain appropriate for male workers, while other, not dissimilar tasks, may be relegated to women. The workplace remains as strongly gendered as the home. This suggests the total unreality of conventional economic accounts. In the language of economics, as in the language of political theory and law, discourse is gender neutral. In the workplace, in the marketplace, in politics and law and the home, gender determines appropriate roles. In economics, as elsewhere, characteristics associated with maleness are highly rewarded, while feminine characteristics remain devalued. Even where the logic of economics makes these discrepancies counterproductive and inefficient, they prove recalcitrant.⁷ The presence of large numbers of female workers devalues the status of an occupation, and destroys its capacity to validate masculinity.

Occupational segregation seems intimately related to another modern phenomenon, the elevation of motherhood from a fact of adult female life to an

⁷ For an argument that occupational segregation is sustained by gender differentiation and by male power, so that, as 'unacceptable' numbers of women enter masculine workplaces they are vacated by men and devalued, see C Cockburn "The Gendering of Jobs: Workplace Relations and the Reproduction of Sex Segregation" in S Walby (ed) *Gender Segregation at Work* (1988) p 29.

exclusive role, indeed, a career. Work is identified in our culture with the provision of products or services whose economic rent establishes their 'true cost'. Motherhood is different.⁸ Leisure is linked with consumption, with using and consuming goods produced by others. Work occurs in the public domain, consumption in the private domain, the home. Like consumption, motherhood occurs in the home, and logically, therefore, it cannot be work. Despite this, with amazing illogic, modern culture has defined motherhood as a full time job, insists it is epitomised by the full-time mother within the family home, and denied it economic value. Insofar as women are identified with motherhood, and insofar as many of women's public sphere occupations can be perceived as analogous to their private roles as wives and mothers, it becomes easy to perceive them as somehow different from real work, work done by men.

The language of the marketplace, a gender neutral language reflecting the world view of rational egoists maximising their satisfaction under conditions of relative scarcity, provides a superb illustration of the inadequacy of gender neutral language as a discourse of reform. The marketplace is genderless, but it privileges competitive behaviour over cooperative behaviour, privileges ambition over responsibility for others, and privileges efficiency and hierarchical structures over substantive equality. Even in the sanitised marketplace of Dworkin, a marketplace populated by actors equal in talents and advantages,⁹ these priorities remain firmly in place. While, under such conditions, it may be that efficiency would be equivalent to fairness,¹⁰ values compatible with economic competition retain their privileged place and assume priority over human relationships and responsibility towards others. So long as these other attitudes are seen as mere preferences and not fundamental pre-conditions of egalitarian social interdependence, so long as conflicts are seen in terms of a cost-benefit analysis in which I measure the cost of engaging in a course of conduct by what my community would (collectively) be willing to pay to persuade me to desist,¹¹ even if talents were equal, an egalitarian society would remain out of reach. Market discourse imposes its own value

8 The sale of children is legally unacceptable in countries such as Australia and the United States, although 'grey market' adoptions and surrogacy are making inroads by indirection.

9 It may be significant that Dworkin's marketplace appears to be gendered. In our tour we meet Adrian (a leisure loving tennis player) and Bruce (a hardworking farmer) and Claude (who would like to be a farmer or a movie star but lacks talent). Somewhat later, in an argument designed to show that individuals would in fact be better off purchasing insurance at modest levels, we meet Earnest, who collects on his insurance because he cannot earn at an exceptionally high level, and Deborah who is beautiful and could in fact earn at an extremely high level as a movie star, and who, because she has purchased insurance at a high level, is 'enslaved by her singular talent' and must work as a movie star if she is to cover her insurance payments. R. Dworkin "What is Equality? Equality of Resources" 10 *Philosophy and Public Affairs* 185 (1981) 284 ff esp 322-323.

10 *Ibid* at 304-305.

11 R Dworkin *Law's Empire* (1986) pp 301-4.

structure upon the conversations of market actors and ensures that successful competition and the power it bestows upon those who realise it will occupy a privileged position. This privileged position, despite apparent progress, prevails as fully in law as in the market and makes reform and change hard to achieve. Critically, the characteristics central to market discourse are precisely those associated with masculinity - independence, competitiveness, ambition and aggression. The ostensible gender neutrality of the language conceals, but does not eradicate, its maleness. It merely reaffirms man as the norm.

III. GENDER NEUTRAL LAWS AS REINFORCERS OF TRADITIONAL GENDER ROLES

Despite legal progress, inequities and anomalies remain. Even where drafted in gender neutral language, laws governing the receipt of unemployment and other social welfare benefits presume that where a man and a woman cohabit one is dependent upon the other.¹² The utilisation of gender neutral terms conceals the assumption of economic dependence and the primacy of the nuclear family as the unit of analysis. Such provisions reinforce the continuing acceptability of relationships of economic dependence by giving them public support.¹³ Even if both parties are unemployed, are actively seeking work and have worked in the past, their individual entitlement to benefits is tied to an assumption that it is appropriate for one to be dependent upon the other. Indirectly, such provisions reinforce the economic dependence of women, because it has been much more common for women to rely upon men for their support than the reverse, given their culturally assigned responsibility for child care. For the purposes of welfare laws, the individuals are submerged in the group and benefits provided which reflect the presumed minimal needs of the social group. Cohabitation creates this presumption,¹⁴ irrespective of formal marriage. If one partner has been dismissed or retrenched, the receipt of income by the other may disentitle him/her to benefits depending upon the amount received. The same presumption operates, that income entering the household is (equally) shared by the members of the household group. In this context it is significant that Parliament has provided a check list of

12 *Social Security Act 1947* (Cth) s 5.

13 Sometimes, of course, the lineage of the presumption of dependence is spelled out more specifically as in *Social Security Act 1947* (Cth), which provides for a 'wife's pension' which is available to the wife of an aged or invalid pensioner.

14 *Ibid* s 6(1). See also the new definition of *de facto* spouse in s 3(1) and the heroic attempt to define a marriage-like relationship in s 3A by ss 24-25 of the *Social Security And Veteran's Affairs Legislation Amendment Act (No 3) 1989* (Cth).

characteristics relevant to the existence of a marriage-like relationship, including joint ownership of significant assets, joint liabilities, pooling of financial resources, sharing of ordinary household expenses, joint responsibility for children, the basis upon which responsibility for housework is allocated, whether the couple either hold themselves out as married or are considered by associates to do so, the basis upon which common social activities occur, the existence of any sexual relationship, and the nature of their commitment to one another. It is noteworthy that but for the definition of *de facto* spouse in s 3(1), the characteristics cited would be equally apt to describe the relationship of many homosexual and/or lesbian couples living in long-term relationships.

The presumption of sharing applies only to marital or quasi-marital situations, emphasising its connection to the nuclear family and to the patriarchal structure of early liberal theory where only the male head of household was a public person. Thus, where a parent lives, for example, with an adult son or daughter, and both are unemployed, each is individually entitled to benefits if otherwise qualified and no presumption of sharing applies. Equally, where unrelated same-sex individuals reside jointly, a common situation given the cost of shelter - each is individually entitled to benefits and no presumption of sharing applies. Potentially, therefore, an unemployed homosexual or lesbian couple would be entitled to a higher level of benefits than an unemployed married couple or heterosexual *de facto* couple, an ironic consequence, but one which emphasises the historic relationship of such provisions to the family. Dependence is appropriate within a marital or quasi-marital relationship, but not outside it. Indeed, given the interrelationship between regulations designed to assign private responsibility for dependent individuals and public regulation of marriage, one may say that a part of the public purpose of laws concerning marriage and divorce is to facilitate the enforcement of just such relationships. The economic justification for 'family' as opposed to individual benefits cannot withstand scrutiny if the perspective of the recipient rather than the state is adopted. While individuals who pool their resources achieve economies of scale in areas such as shelter and the purchase of food, other, equally necessary expenses such as clothing, are not diminished by collective living and others, such as the cost of power and transport, increase. The economic benefits of purchasing food and shelter as a household group occur irrespective of the relationship of the individuals in the household. The presumption of dependence is invoked to keep welfare costs to a minimum. Presumption of dependence assigns responsibility for indigent individuals to the family thus diminishing the burden upon the community as a whole. These presumptions can only be invoked within a conceptual framework which regards dependence as the norm within the family and in which the nuclear family, not the individual, represents the basic social unit. It is

remarkable then, that individuals continue to people the pages of theory, and families are nowhere to be found.

Where sub-adult children are present the situation is different. Those responsible for their care must purchase shelter, food, clothing and other necessities for them because they lack the legal and social capacity to secure these for themselves. Their dependence subsists independently of the relationship of their biological or social parents. Whether their parents are legally married, living in a de facto relationship, separated or divorced, or have never lived in a long term relationship, children have no choice but to depend upon resources provided by others. Their dependence is invariant, and its invariance is recognised by ss 3(1)-3(2) of the *Child Support (Assessment) Act 1989 (Cth)* which provides both that the parents of a child have a primary duty to maintain that child which takes priority over all other commitments apart from those necessary for self-support and the support of others they are obligated to maintain and that this duty is not affected by a like duty on the part of another. Paradoxically, however, a rebate is available under the taxation laws for a dependent spouse, while no direct rebate is currently available for a dependent child or children.¹⁵ Thus a taxation benefit is directly conferred upon the independent spouse because he (or she) is responsible for the support of a dependent spouse, but to the extent a rebate is available for a dependent child or children, it takes the form of an increased dependent spouse rebate, not an independent provision. Three points are noteworthy here. First, eligibility for the rebate arises because of spousal dependence, not as recognition of the economic value of household labour or parenting. Second, the rebate does not transfer resources from the employed spouse to the dependent spouse, but merely constitutes recognition of the added costs of maintaining dependents. Finally, the nexus between spousal dependence and entitlement is emphasised by the fact that the number of dependent children is irrelevant to the level of the rebate.

The sense that economic dependence can be normatively justified is simultaneously reinforced and undermined by the gender neutral language currently required and this may open the way for further change. At present, gender neutral presumptions are inconsistently applied. Only one partner is required to establish that an effort is being made to obtain employment where benefits are paid to a de facto or married couple irrespective of whether dependent children are present in the household. Economically, of course, this is wholly irrational. Culturally, this reflects the assumption that a wife either is or ought to be economically dependent upon her husband, even where no children are involved. Where children are involved, of course, to insist that both adults seek gainful work would threaten

15 *Income Tax Assessment Act 1936 (Cth)* s 159J. While the spouse rebate is more generous where there is also a dependent child in the household, no separate rebate for dependent children is available.

other normative systems, and highlight the fact that where children are involved one spouse is already working, albeit without remuneration. The extension of the presumption of dependence to de facto relationships is more tenuous both because knowing rejection of the formalities of marriage may also be rejection of the propriety of dependence and because some object to provisions which place such relationships on the same footing as marriage. The prevalence of such relationships requires this to protect the revenue. Extending the presumption of dependence to homosexual or lesbian couples would violate the normative fabric of the community, even as failing to do so potentially privileges them. Extending the presumption to other household groups, even relatively permanent groups, would shatter the nexus between the legitimacy of dependence and the nuclear family, and make it possible for such groups to demand to be treated as family groups, in, for example, zoning laws or entitlements to public accommodation. Equally, of course, such an extension would compel employed members to provide support for unemployed members, and this would be perceived as profoundly coercive since no cultural obligation to support exists outside the nuclear family.¹⁶

The absence of the presumption where the household is composed of parent and adult child or adult siblings is particularly noteworthy. Our culture, unlike its predecessors, substantially identifies the family with the nuclear family. Within the nuclear family, dependence is the norm. Outside it, presumptions of dependence contradict fundamental public values, particularly the imperative status accorded autonomy and independence. Thus, if benefits were paid to such households upon the same basis as is used for married or de facto couples, it would also affirm the legitimacy of holding siblings responsible for one another's support or requiring a parent to support an adult child or an adult child an unemployed or aging parent. Yet, many homosexual and lesbian couples and some of what might be termed 'alternate families' privately acknowledge interpersonal relationships of dependence, both emotional and economic. In some cases such households seek other benefits recognition as family groups would provide. Equally, many heterosexual couples actively reject economic dependence even while affirming emotionally interdependent relationships. The existing legal presumptions are revealed, despite the gender neutral facade, to be consequential upon the presumption that wives and sub-adult children are properly dependent upon the husband and father for support. It is for this reason that households which fall

16 It is, however, noteworthy, that communal living arrangements such as that at Nimbin have been able to exploit this to their advantage and that the legislation was amended in 1989 to deny unemployment benefits for a twelve week period to those who move to an area where work is not available, unless such person has moved to live with or near a *family member* who has already established residence in that area. *Social Security Act 1947* (Cth), ss 116(6A) and 116(6B).

outside the marital analogue also fall outside the scope of legal presumptions of dependence.

Just as the social welfare laws illuminate the continued operation of normative justifications for dependence despite the modern gender neutral facade, similar justifications underwrite superficially inconsistent provisions in the taxation laws. It is symbolically significant that the cost of child-care, where required, is not, in Australia, allowable as a deduction for the purposes of taxation.¹⁷ This disallowance represents a significant disincentive, one which, because of existing social practices, falls primarily upon women. For taxation purposes the income of a woman who, to maintain her employment, expends more than one quarter of her income for child-care is deemed equivalent to that of a man or woman with no such responsibilities. This reinforces the view that the care of children is costless and fundamentally private in character. It reinforces the identity of the worker/taxpayer as male, and therefore entitled to rely upon the costless services of a wife to maintain the domestic household. Yet the cost of child care cannot be analogised to an optional expenditure, for example, credit card payments or car payments. These reflect to some extent the consumptive preferences of the individual. For individuals who have socially been assigned responsibility for young children, such expenditure is a prerequisite to obtaining and maintaining employment.¹⁸ Liability for taxation would not exist *but for* the prior provision of child care. In that sense, child care represents an occupational expense. Despite its necessity, child care is legally deemed a private or domestic expenditure, akin to shelter and food, except in narrowly defined circumstances.¹⁹ Because women continue to be socially and culturally assigned the primary responsibility for the care of other dependents, women as a group are penalised by such arrangements,

17 Child care expenses have been deemed private expenses and therefore not deductible under *Income Tax Assessment Act 1936* (Cth) s 51(1). See *Lodge v FCT* 72 ATC 4174; *Case M69 80* ATC 486. A rebate for child care was recommended by the *Asprey Report* in the mid-1970s but no legislation has been put in place.

18 In some cases, particularly where there are several young children and part-time work is sought, perhaps to ensure that skill levels remain viable or professional qualifications do not become outdated, the cost of child care makes it uneconomic to work, particularly when other work related expenses such as clothing and transport are considered.

19 Several partial exceptions occur in the form of various rebates available to some single parent households, or to households in which the husband or wife is wholly disabled. See *Income Tax Assessment Act 1936* (Cth) ss 159J & 159L. Section 159J provides a rebate equivalent to a spouse rebate where the taxpayer maintains a daughter-housekeeper who is wholly engaged in caring for the taxpayer's household and caring for his or her children. A similar rebate is available via s 159L for an employed housekeeper who is wholly engaged in keeping house for the taxpayer and caring for either a child under sixteen for whom the taxpayer qualifies for a notional rebate, an invalid relative or spouse. It has been suggested that to qualify the housekeeper must have decision-making responsibility for the household and that the mere carrying out of domestic duties is insufficient. See *Case U214 87* AT 1204. Except in extremely unusual circumstances, this rebate is not available to a married couple.

and the burden falls most heavily upon the disadvantaged, a group in which female sole parents are over represented. While a sole parent rebate is available via s 159K²⁰ this is *less* substantial than those available for a housekeeper or daughter-housekeeper. The Commissioner maintains that the latter rebates require responsibility for day to day decision making as well as financial responsibility.²¹ Exactly what this involves remains uncertain, as does the extent to which the rebate may be available to a married taxpayer. The Commissioner believes that it may be justified in the cases of desertion, long term imprisonment, or where severe permanent mental disability precludes the spouse from taking any part in child care.²² Despite the reluctance to allow deductions for child care, a rebate is available for a dependent spouse. It is worth noting that the rebates available for a daughter-housekeeper, and, *a fortiori*, an employed housekeeper are available in practice only where the household is sufficiently affluent to afford employing a housekeeper full time or where an adult female child is available to work without wages and a parent is able to meet her needs. Both these provisions, despite their partially gender neutral character, undoubtedly reflect traditional household structures in which unmarried female household members, or, where necessary, employees assumed the entire responsibility for the provision of domestic services and parenting. Still more significant is the anti-egalitarian potential of the daughter-housekeeper rebate. Its existence may, in some families, encourage pressure to be brought to bear upon adult unmarried daughters to jeopardise their own future economic security by either withdrawing from or failing to enter the workforce. That a daughter-housekeeper must be engaged full time in caring for the home of the taxpayer and for eligible dependents clearly precludes her engaging either in part or full time employment or in further training and education. The social, but not legal, connection between such provisions and custody decisions is worth noting, particularly the assumption in many such decisions that the father required the full time services of either a housekeeper, female kin, or a new partner for custody to be granted.²³ The inegalitarian distribution of wealth within the community, and the comparatively disadvantaged position of women also warrants note. While comparatively affluent households may be able to absorb an additional member or employ a housekeeper, such households are more likely to be headed by men. Women are more likely, where employed, to rely upon day care and qualify only for a sole parent rebate. Again, such inconsistencies have dual roots. First, even where legislation has been reframed in gender neutral terms, the normative

20 *Income Tax Assessment Act* 1936 (Cth).

21 *Taxation Ruling* IT 2337.

22 *Taxation Ruling* IT 253.

23 For example, *Rose and Duroux* (1976) FLC 90-061. See S Berns note 1 *supra* for a discussion of the way in which assumptions concerning the necessity of a full time housekeeper are structured according to gender roles.

pull of the traditional family remains a lodestar. Men require a wife or wife substitute for the successful running of a household; women, even those who are struggling to fill dual roles, do not. Whatever else they may be, they are also and primarily women, and therefore able to maintain a household unaided. Second, the legislation tacitly reflects the cultural approbation given those who provide economic support and a cultural denial of both the full cost and the value of caring and nurturing activities. The provision of resources for dependent individuals is recognised, albeit minimally. Care is presumed costless and hidden from view just as the women who normally provide such care are identified only as dependents and likewise are hidden from view.

In Australia, the conflicting presumptions upon which the law of the dissolution of marriage and the taxation laws are predicated are striking. The laws concerning the dissolution of marriage deal with individuals as formally equal legal persons. They make no presumptions concerning dependence and none concerning the allocation of resources within the family. Even a presumption in favour of equal ownership of resources is conspicuously absent. Here, the gender neutral framework is reasonably consistently realised. Within a broad discretionary framework, actual contributions, financial and otherwise, are considered in arriving at a property settlement, and, until recently, needs formed the criteria for maintenance and child support. It is, of course, significant that the language of the legislation was originally couched in terms of contributions and needs, rather than obligations and reasonable expectations, particularly where children were concerned. The language of contributions deals with the actual activities of individuals and directs the court to attempt to value the parties' activities in economic terms, even where no remuneration was received. It looks to the past. The language of needs looks to the future and attempts to ensure that individuals have private resources which will alleviate their dependence upon the state. When dependent children must be considered, it is their 'best interests', their welfare, and their needs which are subject to analysis. Until very recently the obligations of both parents to provide support passed unremarked,²⁴ an omission which is remarkable since each parent's obligation to support legally and socially dependent children is independent of the needs of that child. Every adult individual has an obligation to contribute to the support of his or her dependent minor children irrespective of the ability of the other parent or parent substitute to meet that child's needs, just as every adult individual has an obligation to provide the requisite care. Despite the traditional reluctance of the law to quantify and acknowledge the overriding force of this kind of obligation, it now represents law although it remains significant that support levels based upon the obligation of the parent rather than

24 This has been altered by the *Child Support (Assessment) Act 1989* (Cth) and related legislation.

the needs of the child will be enforced by the state only where the custodial parent receives a means tested benefit. Where this is not the case, the law continues to respect the traditional presumption that the parents are entitled to determine the proper level and form of support, thus respecting the privacy of the family. The legal recognition of contributions in formulating property settlements was an important step. Gender neutral language is employed, and while it is a major triumph that contributions in the form of household duties and child care are statutorily considered on the same basis as provision of financial resources, a great deal remains to be done. Recognition of the long range economic consequences of assuming primary responsibility for the household and for care of children exists in principle but is insubstantial in reality. The idea that child care is work has made no inroads, nor has consideration of the long term cost to the 'caregiver', perhaps because once the long term cost to the caregiver is accurately rendered in economic terms, the burden imposed on the wage earner in a traditional family would be unsustainable.²⁵

Taxation laws are gradually becoming gender neutral, but their interaction with the laws respecting the dissolution of marriage and with those governing eligibility for means tested benefits remains problematical. In part, this is unremarkable, given that they arose as discrete bodies of law widely separated in time and ideological perspective. Whilst the *Family Law Act 1975* (Cth) represented legislatively a new beginning, although judicial interpretation has generally been more conservative, both the *Income Tax Assessment Act 1936* (Cth) and the *Social Security Act 1947* (Cth) have taken their present form through decades of legislative, administrative and judicial tinkering rather than radical reform. Thus, while the system of concessional rebates discussed above in the taxation context was enacted by *Act No 117* (1975) (Cth) it essentially reproduced the earlier system of concessional deductions without significant alteration. The major change in real terms was the *removal* of the concessional deductions for dependent children and students and their replacement with notional rebates and the 1984 inclusion of a rebate for a de facto spouse via s 159H(3). Likewise, changes in the *Social Security Act 1947* (Cth) have been evolutionary rather than revolutionary, and many of them have either updated the terminology earlier employed or have gradually eradicated provisions aimed at the identification of the 'deserving poor'. As recently as 1973, eligibility provisions regarding aged and invalid pensions required that pensioners be of good character, deserving, and not guilty of any marital offence within the recent past such as, for a husband, either desertion or failure to maintain his wife and children and, for a wife, desertion of either a

25 For one economic rendition of the cost to the average Australian mother involved in bearing and rearing three children, see Department of the Prime Minister and Cabinet Office of the Status of Women, *Women's Budget Statement* (1989) AGPS 76.

husband or children.²⁶ Quasi-marital relationships were recognised only through the statutory definition of a 'dependent female', such being a woman living with a man on a bona fide domestic basis.²⁷ Likewise, supporting mother's benefits were available only where the applicant had taken reasonable steps to obtain maintenance from the father or fathers of the children involved.²⁸ In that respect, the current withdrawal from social provision and return to private obligation resembles a gender neutral update of earlier legislative provisions, although the legislative imposition of a duty to support children and the provision of an efficient enforcement mechanism is radical.

It is significant that radical restructuring of family law has proved easier to achieve than radical restructuring of the taxation system. This emphasises both the diminished role of the family and the politically and ideologically central roles of taxation and social welfare. As is the case in the marketplace, physical responsibility for the care and well being of others represents a deviation from the norm, whereas financial responsibility represents the norm. Despite the emphasis upon gender neutral language, the provision of financial support associated with the male gender role is understood to reduce available income, albeit only through rebates and notional rebates, whereas responsibility for care continues to be presumed costless. The centrality of traditional role definitions is emphasised by the fact that spousal maintenance and child support payments were until 1988 non-taxable in the hands of the recipient where they took the form of periodical payments received by a former wife and provided that the husband had not divested himself of any income or income producing assets to provide them. The same payments in the hands of a former husband were taxable.²⁹ The recent amendment was clearly necessitated by the pending reform of child support laws. One way of untangling the ideological presumptions involved emphasises both the former improbability of such payments and their ideological incongruity. Until recently, female participation in the workforce other than among the lower classes was fairly minimal and the association of women with the maternal role effectively denied that a woman had an obligation to provide support for either her husband or children. Equally, the association of men with the breadwinner role contradicted any need on their part for maintenance and/or child support. The ideological incongruity of such payments could only be reconciled through the further assumption that the former husband was being paid a wage for the care of the children, precisely

26 See *Social Services Act 1947* (Cth), ss 22, 24A as in force in 1973.

27 *Ibid* ss 18, 59. A somewhat similar provision in respect of unemployment or sickness benefit provided that if a woman is engaged in keeping house for a man and one or more of his children, is not his employee, and is substantially dependent upon him an increased benefit is payable. Section 112 (4A).

28 *Ibid* s 83AAD.

29 *Taxation Act 1936* (Cth) s 23(1).

because he had no obligation to do so. Since the money received could, in his hands, be considered a wage and child care was clearly work *if done by a man*, taxation was appropriate. The same was not true of maintenance and child support received by the mother. Because the mother role was inseparable from her moral obligation to provide care and because her role as caregiver was believed to be biologically preordained, viewing alimony or child support as akin to a wage was insupportable. Whatever she might have been doing, it was not 'work'. Thus, her former husband's support obligation became a gift in her hands and exempt from taxation rather than analogous to a wage and subject to taxation. In that way her properly dependent status was highlighted. Today, relative coherence prevails. The provision has been reconstructed in gender neutral language and support payments are taxable neither in the hands of a former husband nor former wife, reflecting in a gender neutral way the fact that such monies have already been taxed in the hands of the wage earner. That no taxation relief is available in respect of either spousal maintenance or child support reflects the ideology of a much earlier era, and, in particular, the tradition that a former husband who was the guilty party in a marriage was theoretically responsible for his former spouse for her lifetime. Given the enactment of the *Child Support (Assessment) Act 1989* (Cth) and the quite substantial liabilities for child support imposed thereunder, political reassessment of such taxation provisions seems likely. The child support levels provided for by administrative assessment will represent a very substantial reduction in the disposable income of the liable parent, and, in the hands of a custodial parent who is in the workforce, will dramatically enhance disposable income. In the hands of the custodial parent, child support payments already constitute income in the sense that such payments reduce eligibility for social welfare benefits, however they do not constitute income in the sense of either forming a part of the taxable income of the recipient or, apparently, in the sense of being considered the separate income of dependent children such as to eliminate eligibility for the sole parent rebate in the case of an employed custodial parent.³⁰

Women continue to seek and obtain custody to a greater extent than men, a factor reflecting their continuing primary social responsibility for care and nurture,

30 It is possible, however, that the position may be otherwise. In *Sharma v FC of T* 84 ATC 4260, the New South Wales Supreme Court equated sole care with sole financial responsibility. This suggests that where the custodial parent is not in employment and thus is not herself or himself providing direct financial support the liable parent may be able to claim the sole parent rebate. The Commissioner in *Taxation Ruling IT 2337* took the view that sole care refers not simply to financial responsibility but rather to full responsibility for decision making on a day to day basis. This is supported by a decision of the Taxation Board of Review, in which despite liberal access rights, full care for a number of periods, expenditure of money on the child, and payment of maintenance to the custodial parent the custodial parent was nonetheless entitled to the full rebate. The position remains unclear, and, given the financial constraints of most families, it appears likely that the matter will have to be resolved legislatively rather than judicially.

and this obliges them either to reconcile themselves to a financially marginal existence or to enter the labour force and remain within it. While men may pursue custody more vigorously given the greatly increased child support liability now in place, it is impossible to predict the long range consequences of the new measures. Those custodial parents with young children who do enter the labour market have their real earning capacity substantially reduced because they are required to precommit much of their total resources to child care. It is significant that this cost is recognised in calculating the child support obligations where both parents are in the workforce, but is not recognised in the taxation laws other than in the form of the sole parent rebate discussed above. For those fortunate enough to obtain a place in subsidised child care, the fees are tied to earning capacity. Those who must seek child care in the marketplace are not so fortunate. Even those whose education and skills place them among the more affluent suffer a significant reduction in disposable income and an attendant reduction in standard of living, one which obviously affects both the individual and the children for whom he or she is responsible. Women employed in traditionally female occupations are further disadvantaged by their low earning capability. The effects of economic disadvantage spread into areas such as housing, food, clothing and funds available for educational materials. Those who require further training or education to become employable are in a particularly difficult position. Effectively, many women are bombarded by conflicting messages. On one hand, they are expected to struggle to achieve and maintain economic self-sufficiency, a message reinforced by levels of support available through the social welfare system, while, on the other, they are denied access to the support system and resources required to make the attempt viable. Frequently, the choice is between securing the education or training necessary to render them optimally employable and maintaining an adequate standard of living for themselves and their children.

Iniquities such as those discussed above are consequences of the fact that child care, like other household services, has traditionally been presumed to be provided costlessly and therefore no offset against gross earnings is required. Private provision (that is, care by a dependent wife) remains the norm. The laws concerning the dissolution of marriage attempt to redress this by recognising the economic worth of such services, while the taxation laws reinforce the traditional presumption. The taxation laws, traditional in character and linked to marketplace assumptions, treat the need to acquire such services as a personal decision or choice, one related to the private preferences of the individual. Because the acquisition of child care services is a private matter rather than one related to employment, it need not be considered in the interpretation of taxation laws. The presence or absence of family responsibilities is irrelevant to the role of worker as worker, a proposition reflecting the social arrangements earlier this century in

which an overwhelming majority of workers were male and married women were relegated to domestic roles. Such expenditures are not seen as costs related to employment while deductions are allowed for travel to conferences and other employment related functions where these are part of the occupational framework. A distinction is drawn between expenditures related to the performance of the characteristic duties of particular forms of employment and those which are necessitated by the personal circumstances of the worker. The former are seen as part of the public world, the latter as private and personal. Even where the choice is between employment and the associated costs, and a marginal existence on social welfare benefits, and thus may be said to be no choice at all, the presumption continues to apply.

IV. REDRESSING THE IMBALANCE: FORCING LIBERAL SOCIETY TO LIVE UP TO ITS IDEALS

A reverse presumption would appear more equitable, that where there are young children in a household child care must be purchased at the current market rate for care in a child care centre.³¹ Such a presumption would suggest the allowance of a child care rebate to every household in which children young enough to require either full or part time supervision reside. Such a presumption would provide the financial base for real choice. Where both parents choose to work, it would afford recognition that arrangements for care are a prerequisite of employment. Where a spouse or partner, male or female, provides child care services within the household, the economic value of such services warrants recognition. The need for child care is a consequence of the presence of young children in the household, irrespective of the relationship of the party providing care to the children. If a rebate for child care is to be made available to working parents, the interests of a non-working parent caretaker must be considered. Fairness could be maintained by allowing the working parent to claim one half of the relevant rebate provided that it was directly remitted to the parent providing care. The mechanism for deductions and remission through the Child Support Agency now operating as part of the Taxation Department could readily be used for this purpose. Such a system would have a number of benefits. First, it would acknowledge the market value of the labour involved, gradually dispelling the belief that child care is costless. It is illogical to recognise its economic significance only upon dissolution of marriage and in calculation of child support obligations. Where earnings are insufficient for the rebate to be fully available, the deficit ought to be met by the state, enhancing

31 Care in a child care centre currently costs from about \$90 per week upwards.

the economic position of low income families. Second, if such rebates were pegged to actual market costs and coupled with a requirement that a proportion of the rebate be withheld to establish a nationally based superannuation scheme for child care providers, one which would be fully portable and could be integrated with other superannuation schemes, many more women would be able to establish an independent source of income to provide for future needs. This is particularly significant because women presently enjoy greater longevity than do men, and would help mitigate the poverty in which many elderly women live. Finally, by requiring an actual transfer of funds to the individual providing the service, the economic value of caring activities would be symbolically affirmed. The care provider would have access to independent means as a matter of legal entitlement, access which is often critical to self-esteem and the capacity to escape violent relationships. While, obviously, the cost to the revenue would be substantial, it could be partially offset by the elimination of existing dependent spouse rebates and related benefits such as the housekeeper and daughter-housekeeper rebates.

The issue of equity for sole parents presents further difficulties. While an adequate child care rebate would significantly enhance the economic position of working sole parents, it would not address the needs of those who are unable for any reason to obtain outside employment. Thus, in considering appropriate recognition of the labour expended by single parents in caring for children it is necessary to realise that for the foreseeable future a significant minority of individuals will be unable to secure employment which provides a living wage, particularly if its compatibility with child rearing and available child care services must be considered. The proposal outlined above is not related to the need of children for adequate support nor to the obligation of their parents to provide that support. Neither is it directly related to the need of every individual for an income adequate to meet his or her personal needs. The emphasis is upon recognition of the opportunity costs of caring activities.

Following either dissolution of marriage or the end of a *de facto* relationship, the obligation to support the children of the relationship (one shared equally by both parties) must be treated as independent of the entitlement of the caring parent to compensation for the economic cost of providing personal services. Where the relationship between the biological or legal parents has ended, the non-custodial parent can no longer be said to benefit directly from the provision of child care, although, clearly, indirect benefit remains relevant. The non-custodial parent has no legal obligation to provide supervision on a regular basis and the moral obligation has been overridden by the custody award. Here it becomes essential to acknowledge the responsibility of the community as a whole for the welfare of its future citizens. Modern communities have gradually assumed responsibility for the care, welfare and supervision of those children whose parents are unable or

unsuitable to provide care. In such circumstances, the state contracts for the necessary services from other individuals. It seems appropriate to extend this public provision where the carer is a sole parent and to provide compensation regardless of any other entitlement to social welfare benefits or maintenance and child support payments. Equally, where a working single parent is unable to earn an amount sufficient for a full rebate to be available, the difference between the value of the rebate and the amount actually received by the individual ought to be made up by the state just as happens in a two parent household. Any alternative implies that the caring work of such parents is of less value than that of the more fortunate, reinforcing the belief that poverty arises from some innate deficiency in the poor. While these suggestions fall short of ideal theory equality, their aim is to afford concrete recognition of the time and labour entailed by caring activities and recognition that these involve work which is not compatible with other productive activities. They would provide many individuals with the kind of meaningful access to alternatives which does not at present exist: having independent resources while remaining at home to care for young children, having the resources needed for part-time employment to be an economically viable option or, equally, having the resources needed to cover child care costs while undertaking further training or education.

Measures such as those outlined above pose a number of problems. First, by focusing upon the market cost of the services and treating need as irrelevant, they appear to enhance inequality while seeking to place individuals with family obligations in a more equal position. Gradually diminishing the rebate as earnings rose and extinguishing it altogether where income rises above a threshold level would treat it as a benefit rather than an entitlement. The difference is critical. Once the focus returns to needs, it is directed away from recognition for work done and services provided. Second, the application of the provisions to sole parents, and the insistence that it ought not be considered in ascertaining the need for other benefits does leave open the possibility that some individuals might find prolonging a caretaking role economically advantageous. That is, some might find that the amount they could earn, given their existing skills, would be substantially less than the funds available from child support, the child care rebate and a supporting parent's benefit. Thus, it would be appropriate to require those in receipt of a supporting parent's benefit to participate in job training or further education. This could readily be reconciled with the structure of obligations suggested, in particular the obligation of each parent to contribute to the support of his or her children. A sole parent ought to be encouraged to attempt to meet that obligation wherever possible. Likewise, it would be preferable to incorporate significant incentives to efforts at self-sufficiency in the structure of other benefits. Present benefit structures, particularly the failure to require participation in training programs and

the lack of an adequate free zone before deductions start, operate as a disincentive and fail to adequately recognise the additional costs involved in seeking and maintaining employment. The denial of a taxation rebate for child care reinforces this disincentive. Objections could easily be met by a combination of incentive schemes and participation requirements.

Although the costs suggested are an inadequate measure of the social value of the services provided, it is important that the basic figure be one which is realistic. While, on the level of ideal theory, a society in which the multiple obligations of normal adult individuals can be reconciled with economic self-sufficiency is an important goal, on a practical level this can be worked towards through more limited objectives. Every individual who has responsibility for one or more children has a concurrent obligation to provide a fair share of the necessary care, just as he or she has an obligation to contribute to their support. The obligation may arise as a consequence of positive choice, as in adoption or foster care arrangements, or because of biological parenthood, because, but for his or her genetic contribution to conception that particular child would not exist. Where an individual is unavailable to provide actual physical care for a substantial portion of the day, because of outside commitments, the obligation continues to subsist, and given the dependence of our culture upon money as a medium of exchange, it is necessary that it be quantified in the form of economic rent. The obligation of one individual is never discharged *simply* because he or she is able to rely upon another individual to meet it 'costlessly'. This is particularly true where the obligation must be met through the provision of personal services. Rather, where care is provided 'costlessly' by another individual, that provision replaces the obligation to provide care personally with an obligation to compensate the individual who provides the actual care at a level commensurate with the cost in time and effort. The cost of child care becomes obvious where care is acquired in the marketplace. Denying that, in a single income two parent household, the earnings of the wage earner are partly dependent upon the ability to rely upon the provision of services by another individual denies that services provided in the home have economic value. While love and affection cannot be quantified, there are no such barriers to calculating the economic rent of providing supervision and physical and educational services.

Today money has become the exclusive medium of exchange for both goods and services, and the market price is believed to establish the value of those goods and services. Where services are presumed to be available costlessly, they are devalued and this devaluation is likely, in turn, to depress the price of comparable services available commercially. Our lives are not lived in hermetically sealed spheres. Realistic payments for child care services would treat the service provider as having an independent entitlement to the money involved. The concept of an

independent entitlement is critical. The entitlement is generated, not by the personal and emotional relationship between the adult members of the household nor by the emotional bonds between parent and child, but by the fact that services are performed and time expended which could otherwise be devoted to recreational or educational activities or to work outside the household. An automatic child care rebate scaled according to the number of children requiring care and their ages recognises this and accords it status as a claim of right. It must not be forgotten that the obligation of the caretaking parent to contribute to the support of the child or children also continues to subsist, irrespective of the support provided by the other parent. The appropriate language is that of obligations, and not that of needs, an important distinction. Difficulty arises because the structure of modern institutional societies makes it difficult to meet the obligation to contribute to the support of a child concurrently with the obligation to provide care and supervision unless a substitute caregiver is obtained. This is noteworthy. Our culture *disables* the great majority of its adult members from meeting all of their obligations to others, and conceals these failures beneath the rhetoric of the family.

A child care rebate would broaden choice and open options for individuals while enforcing acknowledgment of pre-existing obligations and emphasising the productive nature of caring and nurturing activities. It would not have the effect of discriminating between parents who work outside the home, and those who do not. Rather, it would recognise that child care provision is a worthy, if transitory, occupation with substantial economic and social worth. Such measures may ultimately have radical potential, both because they recognise and enforce personal moral obligations and because that recognition, if coupled with changes in institutional structures to facilitate job sharing and part-time work, might alter the way both men and women view their responsibilities to others. It would reimburse working parents for outgoings essential to the production of earned income and recognise the monetary value of the labour of a parent who works in the home by compelling the parent with outside employment to acknowledge directly the economic benefit received from the services provided by the spouse.

A program such as that outlined above would not, of course, alter wider social and economic inequalities. Its value lies in the symbolic statement it makes about the monetary value of one group of 'private' services and the enhanced opportunity for real choice it would provide to many individuals. Obviously, many other uncompensated exchanges occur within normal households. These have been symbolically addressed under the rubric 'wages for housework'. These wider issues are less amenable to resolution. First, while children need a minimum level of care, supervision and stimulation to remain accident-free and healthy and to realise their potential as individuals, a base level for personal services and for housework is more difficult to identify. All normally healthy adults are or ought to

be capable of providing these services for themselves, irrespective of other commitments. Thus, it is fair to deny that any such individual requires that these services be performed by another. This is an important distinction, because it suggests that, unlike the care of children, the performance of personal services for other normally healthy adults and the undertaking of household chores are, in general terms, morally non-obligatory, at least beyond the level of those essential to the health of the children. Second, these tasks, while important, are diffuse. They normally benefit the entire household rather than specific individuals which emphasises that they are properly shared or rotated. Every adult and older child ought to possess and exercise the basic competencies necessary to maintain adequate shelter, prepare food, and maintain clothing and personal effects. Just as every adult must organise these if living alone, the same ought to apply in other circumstances. While it is clearly inequitable if both adults work outside the household for the performance of essential household chores to devolve upon one adult, because many household tasks are flexible in that they can be performed at varied times and interspersed with other activities, they do not place the demands upon the individual which are imposed by child care responsibilities. As every single person knows, it is possible to maintain the household, do the cooking and laundry and carry out other essential tasks while maintaining gainful employment. Performing these chores will diminish leisure and may be perceived as comparatively unrewarding, but this is, in itself, an extremely poor excuse for non-participation, a non-participation often 'justified' upon the basis of traditional gender roles.

The concept of 'wages for housework' also presents further difficulties, difficulties which are tied to the profound existing inequalities in access to income and to the amenities which can be acquired with such income. The actual work involved frequently is inversely proportional to the level of family income. More affluent families frequently possess far more labour saving devices: programmable cooking equipment, dishwashers, washing machines and dryers, etc. The less affluent the household, the more labour in real terms is required to maintain the same standard. Likewise, modern, high quality housing is much easier to maintain than sub-standard housing. These factors minimise the level of real work required. Thus, while a benchmark is readily established for the cost of child-care services during working hours, a similar benchmark for household chores (which would necessarily be based upon the cost of securing paid household help sufficient for each household to reach a minimum standard) might well overvalue the work performed by the more affluent and undervalue the work performed by those less fortunate.

Anyone who wishes to insist that women are entitled to adequate economic compensation for child care services, services which are provided in the home and

have traditionally been assumed to be fundamental to the marital relationship, must address a variety of problems. In many traditional households, it is assumed that the husband's obligation to supply his wife with shelter, food, and clothing provides a 'fair' exchange for her services in the household. That is, she exchanges personal, domestic and parental services for financial support and (perhaps) protection. The assumed reciprocity masks the inequality of the exchange. In many families, the current market value of all the services rendered by a full time wife and mother would, if aggregated, exceed the amount her spouse is able to earn, let alone the support he elects to provide. This is particularly true in those households in which the housewife has virtually exclusive responsibility for child care, marketing, cooking and household maintenance. Likewise, among the very affluent, particularly where the resources are such that domestic help is available, her services may be worth only a fraction of the funds made available for her use. Obviously, the level of spousal support will depend to a substantial extent upon the resources available to the spouse as well as on the amount dictated by individual preference or choice. Talking about equality for women presupposes a much more general concern with equality as such. A world in which wealthy women are equal to wealthy men, leaving impoverished women to struggle alongside impoverished men to survive has limited appeal.

Relating specific women's concerns - meaningful economic recognition of work done in the home, dismantling of structural barriers which inhibit women's participation in the economic and political life of the community, and confronting and dismantling modes of discourse and thought which presume that male experience is the norm and which correspondingly devalue women's experiences and concerns - to the prevailing pervasive inequalities based upon class, race and ethnicity is a daunting task. The arguments put above have emphasised the 'user pays' principle, specifically the principle that the cost of the services rendered in any normal household ought in principle to be borne by those who benefit from the availability of another individual to perform the services required. Thus, where one individual is freed to engage in employment because child care is provided by another, the cost is properly assumed by the party who receives the primary benefit. Obviously, the transfer payments suggested would benefit low income earners to a greater extent than the more affluent. Equally the sum mooted reflects the approximate current market cost of creche care covering at most the hours from eight in the morning until five-thirty or six in the evening on the basis of a five day week. It does not purport to provide a living wage for the carer. There are two reasons for this. First, where care is provided within the family, the individual providing the care also has an obligation to provide it. The obligation is one common to both parents, not specific to either parent. Thus, the allowance is based upon the amount one partner might be presumed to contribute to the other by

providing care. Second, a full wages for child care program could easily operate to entrench existing roles. While such a parent would have the benefit of economic independence, she might well not have the equally important benefit of uncoerced choice. It is for this reason that the benchmark ought to be the market cost of care in a child care centre rather than the wage of an individual child care worker. Levels pegged to the earning capacity of the caregiver are unacceptable because they declare the care provided by some to be of greater value than that provided by others.³² Such a judgment is profoundly inegalitarian, and therefore is one which the state ought not to make. In particular, it is important to avoid any solution suggesting that services provided by the less fortunate are worth less than those provided by those more fortunate. Equally, it would be undesirable to limit the availability of either a child care deduction or the requirement for transfer payments to the service provider to those family units whose income falls below a specified cut off point. The driving force behind these arguments is the need to provide meaningful recognition of the economic value of such work.

Only when these existing public commitments are fully honoured will the social meanings supporting them become inescapable. A central element in these social meanings is that activities which possess immense social and human value, caring for future generations, caring for the ill and elderly, in short, meeting the needs of others, possess negligible economic value. Those who engage in such activities are generally low in social and economic status and their views non-authoritative. While such work is both necessary and useful, performing it seems neither a worthy ambition for people nor a significant accomplishment. These activities are devalued by the public culture and those who perform them correspondingly devalued. Despite the egalitarian rhetoric of modern states, competing and well-established traditions persistently suggest that poor families are less valuable than are the more affluent. The middle class remains the norm and the public ideal. Undoubtedly tremendous individual variations exist in the quality of both homemaking and caregiving services. Some families, both affluent and impoverished, provide an exceptional atmosphere; others are brutal and abusive. These variations are not directly correlated to social class or economic status.

32 Existing parenting leave schemes in advanced social welfare states such as Sweden have set the subsidy at fifty per cent of prior earnings and limit the paid leave to one year. For the Swedish position see H Scott *Swede's Right to be Human* (1982).

V. SOCIAL VALUE AND THE PUBLIC/PRIVATE DISTINCTION

Measures such as those suggested above, of course, are panaceas in that their intent is to address the most severe inequities in present structures and to compel economic recognition of the value of care-giving activities. They do not purport to address the wider implications of the existing social divisions based on class, race and gender. To make this admission, however, seems also to suggest that gender based inequalities can be isolated from wider social, legal and political issues and dealt with in isolation. This is not the case. Neither can egalitarian theories which ignore the social, economic and structural barriers to equality for women live up to their egalitarian pretensions. Indeed, one central difficulty with modern egalitarian theories of justice may be found in their heroic attempt to be context-free and context-sensitive simultaneously. In their attempt to reconcile egalitarian distributive outcomes with an emphasis on neutrality towards or tolerance of a wide range of private values they fail to take seriously the embedded structural barriers to equality for women and other disadvantaged groups and the pervasive connection between these barriers and many of the private values towards which they profess toleration. More seriously, such theories tacitly sustain our acceptance of a radically impoverished public value structure. Present Western cultures find it difficult to ascribe value to human activities and contributions in other than economic terms, just as they find it difficult to address environmental and social values in language which is neither economic nor instrumental. Even where conscious attempts are made to frame arguments which suggest that diversity is itself a positive source of value, that, *ceteris paribus*, a more diverse physical, cultural or social environment is, for that reason alone, preferable to one which is less diverse, these arguments deny intrinsic worth. Instead, the argument proceeds instrumentally, arguing that diversity is valuable precisely because it enhances human freedom of choice in the abstract.

On an abstract level, such arguments seem unexceptionable. In abstract terms, having a wider range of options available is necessarily preferable to having a restricted choice. Indeed, similar arguments were used somewhat earlier - arguing that women's choices have, on the whole, been constricted because of prevailing assumptions concerning appropriate gender roles and by institutions which presuppose that workers do not have competing obligations which must be reconciled with institutional roles. Similarly, it has been argued that prevailing institutional structures restrict the real, as opposed to theoretical, choices available to both men and women because they are organised around tacit and dehumanising social norms concerning appropriate life stages and career patterns. However, at no stage has it been argued simply that, *ceteris paribus*, a greater range of choices is preferable to a narrower range of choices. Neither is it suggested that it is

meaningful to contemplate freedom of choice as an abstract concept. Choosing in the abstract, apart from context, relationship, and the concrete realities of social life is a barren exercise. What ever might be learned if we were actually involved in making such choices, from behind a veil of ignorance perhaps, we would learn little or nothing about the considerations involved in real choices. Rather the entire concept of choice must be re-examined. Choices exist within a specific context and are made by real individuals. The choices made alter the context in which future decisions will be made. Real individuals do not exist in isolation and they are seldom, if ever, mutually disinterested. Furthermore, choices are not mysterious entities but concrete decisions with profound practical consequences. Our choices act upon the world in which we live and have the capacity to alter it for better or worse. For this reason, it is necessary to attempt to evaluate the long range consequences of present choices. The possibility, even likelihood, that the predictions may not be wholly accurate does not excuse the failure to make the attempt. Where some projected consequences seem intrinsically preferable to others, these consequences become relevant to the choice itself. This does not mean that the consequences of a course of action are all that is relevant, a proposition as silly as insisting that consequences are never relevant, but it does mean that it is relevant that some states of affairs appear inherently preferable to others. For example, when we are considering the need for adequate child care if women are to be freed to occupy multiple roles, we must consider how the need can best be met, and the desirability of extending institutional socialisation to younger children. Best ought not be taken to imply most efficient. Large scale, institutional centres may be efficient and generate substantial economies of scale but that does not mean that they represent the optimal solution.

In addition, the concept of choice is not free from ambiguity despite the efforts of liberals to reduce it to its bare bones. The ideal of choice is not meaningful unless it is interpreted in a way which is sensitive both to the internal context in which choices are made and the external constraints upon choice. Consider a professional woman with a husband and young child. If she desires to obtain employment in her professional field, the existence of that choice depends upon (and is constrained by) the availability of suitable child care, the attitude of her spouse, and her psychological capacity to reconcile her perceived (and partially socially constructed) obligation to her child and husband with the demands of her profession and the availability of employment. The external constraints upon her choice include the availability and quality of child care, the attitude of her husband, and the professional opportunities available, specifically, the opportunities available to a married woman with a young child. The internal constraints upon her choice include, not only her perception of the scope of her obligation to her husband and child, but also her responses to their perception of the consequences

of her choice. Even her own perceived need to participate fully in the wider community has a bearing upon the choice she will make. Her opportunities for advancement also, and significantly, depend not only upon her abstract willingness to devote the extra hours necessary to secure promotion, but upon the availability and desirability of after hours child care services and the willingness of her spouse to assume an equitable share of domestic responsibilities and upon her perception of the appropriateness of this. Let us say, after rational consideration of the possibilities open to her, she chooses to continue to work but not to seek promotion. Many different descriptions may be given of her choice. For example, it is possible to say that she has displayed a preference for additional leisure above the financial and personal rewards which might follow promotion. Superficially, this is a neutral description of her conduct in economic terms. Actually, of course, this characterisation depends upon a presumption that hours spent outside of the paid workforce are spent 'in leisure', a presumption which depends upon the idea that the consumption needs of the worker will be met by a spouse, thus freeing him to enjoy 'leisure'. Leisure is expensive, not because it makes use of resources without generating exchanges, but because, very often, its existence depends upon the uncompensated labour of others. She might also be characterised as lacking in ambition and in competitive drive, and her lack of these characteristics related to her gender, a common and destructive generalisation which effectively eradicates the conflicting obligations and responsibilities involved. Her abstractly defined freedom of choice and her subjectively realised perception of the social meaning of the choices available to her are disjunctive. Her abstractly defined freedom of choice remains the same if her husband is seriously ill and unable to work and to share in home responsibilities, however, her subjectively realised perception of the choices available to her are likely to diminish still further. If, in such a situation, she perceives herself to be unable to continue in employment, can it still be said to be meaningful either to construe her as 'preferring' leisure above financial reward or as lacking in ambition and competitive drive? Equally, if her self-perception is otherwise, if these factors drive her to seek promotion and to devote herself to her career because the extra funds make it possible her to secure adequate professional care for her husband, can it be said to be meaningful to construe her as preferring financial reward to leisure or as ambitious and competitive? Again, abstractly defined freedom of choice and subjectively realised perception of choice are disjunctive.

It follows that formal existence of choice and subjective availability of choice are radically dissimilar. No modern egalitarian would deny this. Indeed, the entire motivation behind egalitarian accounts of distributive justice is to diminish the gap between the formal affirmation of choice and its subjective availability. The two accounts examined, however, make use in their models of distinctions which

pervasively devalue the force of the example put above. Rawls argues that a just distribution of social goods and resources is one which treats such things as talents as 'morally arbitrary'.³³ Dworkin, similarly, makes a distinction between the individual's tastes and ambitions, which he assigns to his 'person' and his physical and mental powers, which he assigns to the individual's 'circumstances'.³⁴ Yet the young woman sketched above is constrained, not by lack of talent or physical or mental powers, but by her concretely realised relationships and by the obligations which follow from these relationships. For her, neither the implementation of the difference principle nor the implementation of equality of resources would diminish the gap between formal choice and realisable opportunity. Of course, she could choose either to abrogate her responsibilities, or to evaluate her options without reference to these. Once this becomes the appropriate perspective for choice, she has become the atomistic individual of classic liberal thought, an individual both these theorists are at some pains to assert is not a necessary corollary of their accounts.

Two central and related attitudes have combined to reinforce and entrench gender based inequalities, attitudes which both interact with and transect other social inequalities based upon class and ethnicity. First, across the economic spectrum, women apparently presently perceive their responsibilities for others as morally binding and obligatory to a greater extent than do men. That is, faced with a conflict between meeting their obligations to others, most particularly those who are vulnerable, and complying with the structural demands of participation in and advancement within the paid labour force, they have assigned priority to fulfilling obligations originating in personal relationships. Second, present institutional roles are predicated upon the assumption that economic actors do not experience conflicts of this kind and that their primary commitment is to market activity, to rational self-interested maximisation of return. A wide variety of institutional roles are structured so that they can only be filled by economic actors who have no other significant non-financial obligations. These two perspectives emphasise the essential differences between the way in which women presently view themselves and their world and the way in which men have traditionally viewed themselves and their world. While it is unlikely these differences are innate, evidence suggests that they do reflect the moral experience of a significant number of individuals.

Those obligations which women tend to perceive as morally significant and binding have their origin in interpersonal relationships and in the vulnerability of others. They are 'persona' and individualised in a way in which most institutional relationships and roles are not, a point which emphasises that the conflict is not

33 J Rawls *A Theory of Justice* (1972) p 100-108.

34 R Dworkin note 9 *supra* at 311.

that between the individual and the community but between different modes of apprehending relationships and their capacity to create community and differing conceptions of what it means to be an individual. Calling these obligations 'private' or natural misses their force. Calling these relationships personal means simply that they are specific, non-generalisable. A very different, and perhaps more forceful way of acknowledging the character of these relationships is to describe them as 'I-Thou' relationships, relationships in which each fully acknowledges the other as subject. Institutional relationships lack this specificity and directness. Within institutions, individuals are identified with their institutional role, their position within the hierarchy. Such relationships are 'I-It' relationships, relationships in which the individual as subject relates to others in terms of their role and position rather than as concrete individuals. Institutional relationships are, in this way, inherently status relationships. The present occupant of any particular role is relatively unimportant. The significant factors are the definition of the role and its perquisites. While institutional roles are acquired on the basis of merit, they share with traditional status relationships an inbuilt failure to acknowledge the individual as subject. Roles are identified with their productive function and their position in the hierarchy. The obligations and responsibilities involved attach to the role rather than the individual. Thus, obligations terminate when roles alter or are redefined. The 'respect' owed by the individual worker to an immediate superior need not survive the promotion of the worker or the demotion of the superior. Instead, 'respect' is transferred to a new superior, or if the former subordinate and superior now occupy equal status, their relationship becomes that of equals. This sort of 'respect' is readily extinguished because it attaches to positions and their placement in the hierarchy and not to the individuals filling them.

The sketches in the last paragraph offer two distinct ways of viewing obligations, one personal and individualised, the other impersonal and deindividualised. In neither case, and this warrants emphasis because it contradicts prevailing myths, does the force or the persistence of the obligation depend upon love and affection. The subjective force of personal obligations, for example to provide for the care of an aging parent or in-law, does not depend upon a past loving relationship and may survive an overtly abusive relationship. Rather, such obligations depend to a substantial extent upon the present vulnerability and need of the individual involved. They look outward at the needs of the other. Institutional relationships also depend for their force upon need, but a need which looks inward rather than outward in response to the needs of others. Institutional relationships are fostered and sustained by the need of the individual for the rewards compliance with institutional structures brings and reinforced by fear of the consequences of a failure to comply.

If, as is frequently suggested, women's inequality is a consequence of the fact that women perceive relationships and responsibilities in a very different way than do men, and if existing institutional structures reflect an androcentric perspective, one in which obligations are perceived as a consequence of defined roles rather than as involving recognition of the other as a subject like oneself, it follows that equality for women is unlikely within existing institutional structures. The implications of this suggestion, are, however, far more pervasive than a simplistic emphasis upon economic equality for women might suggest. First, if women tend to perceive responsibility and relationships differently from men, if women predominantly adopt an interpersonal view while men tend to view relationships in terms of defined and limited roles, equality for women within present social and institutional structures may be as undesirable in the long term as their present inequality and dependence has proved pernicious. As society is presently organised, women can achieve equality within economic and political structures only if they come to regard their relationships with others and the responsibilities these generate as detachable and peripheral to their public lives. Equality as comparison comes with strings attached. A society in which such ideas were realised might, despite public egalitarianism, be one in which vulnerable individuals were, to an even greater degree than at present, perceived as impediments. It is difficult to see how, on a moral level, that could be thought to be an improvement.

Likewise, if one important consequence of this difference is that men are presently more comfortable in dealing with other individuals in terms of clearly defined roles and obligations, while women tend to relate directly to others as subjects like themselves, relationships between men and women are likely to become increasingly problematic. Certainly, the stereotypical gender roles which dominate the popular imagination encourage a view of men as independent, active, competitive and achievement oriented, whereas women are perceived through the lens provided by their relationships to others, primarily to men and to children. Thus, women tend to be seen as dependent, acted upon, passive and non-competitive and nurturant. This disjunctive perception encourages the continued perception of women in either-or terms - either as wife and mother filling traditional roles, or as sex objects. The increasing legal changes and the gradual entry of women into traditional masculine fields may yet force changes in these stereotypes but it is difficult to predict what form these changes will assume. The present trend appears to be to grant such women status as surrogate men, and this represents one reason why the provision of truly adequate maternity and parenting leave and adequate child care facilities has been slow to come. They are incompatible with the honorary manhood accorded women who succeed in non-traditional roles.

Further problems are posed by another significant difference between the perception of men and the perception of women. Men view it as appropriate to allow occupational roles and responsibilities to cross the public private division. Thus, middle and upper middle class men (and the taxation authorities) view it as appropriate to expect their spouses to entertain professional contacts and often bring work home with them. They often expect the unpaid assistance of the spouse in complying with occupational demands. Likewise, working class men frequently invite workmates home for beer or resort to a bar or pub after the workday has officially finished. Equally, men perceive themselves as mobile, free to move from location to location in pursuit of opportunities for employment or advancement. Like their willingness to entertain business contacts at home and to allow work to intrude on time at home, this sort of mobility emphasises the degree to which public and private lives are allowed to overlap. These traditional practices emphasise the degree to which men perceive themselves as entitled to expect their families to support them in complying with occupational requirements, both social and task related. Men carry their public roles into the home and perceive themselves as entitled to do so. For them, the division between public and private is one which maintains their traditional status and privilege, one which defines the home as an institution dedicated to meeting their needs.

To a far greater extent, women, as they enter the workforce, strive to maintain the separation between public and private. They seek both to establish the separation between work and home, and thus comply with the ideological construct of the worker, and to prevent their working or professional responsibilities from encroaching upon their private lives, thus meeting the expectations of their husbands and other family members. This difference is a consequence of traditional gender roles. If the home, for a man, remains his castle, that domain in which he is free to do as he will, for his wife, the home is seen as imposing obligations which must be personally fulfilled. Because women's workforce opportunities have frequently been curtailed because the demands of family life were thought to interfere with their productivity as workers, moving into the workforce places them under substantial pressure to demonstrate that this is not the case. In many cases, their successful entry into non-traditional occupations has depended upon their ability to demonstrate that family obligations will not impair occupational performance. Thus, women are encouraged to seek to arrange their lives in a way which insulates workplace responsibilities from domestic responsibilities and ensures that domestic responsibilities cannot encroach upon employment. Equally, their self-perceived obligation to other family members, particularly those who are vulnerable, together with the continuing reluctance of many men to assume an equal share of domestic responsibilities and to perceive these as a normal part of everyday life, encourages such women to attempt to

simultaneously ensure that their work does not intrude upon their family life. In that sense, women are expected, to a greater degree than men, to fragment and isolate their separate roles and to attempt to ensure that compliance with the demands of one role does not interfere with their capacity to meet the demands of others. For the most part, men perceive no comparable need to erect a barrier between public person and private self. This difference in perception and attitude may, in the long term, mean that changes in workplace roles will have little, if any, effect on private expectations. Many men may continue to perceive the occupational roles of women as irrelevant to their role within the household, and, in particular, their responsibility to meet the demands of the traditionally emotionally supportive domestic role. If public and private roles are perceived as belonging to separate compartments, women may find it essential to work a double shift if they wish to maintain both their occupational roles and their family relationships. The term double shift is not used simply in the sense that women contribute more hours to household tasks than do men, even when they are in full-time outside employment, although that sort of double shift is thoroughly documented. The existence of an emotional double shift is more significant. Women perceive themselves to be constrained to adapt to the prevailing instrumental model of workplace interaction, and equally, to ensure that workplace demands are not allowed to interfere with their availability to provide emotional support and leisure for their partner and for other household members.

The image of the family home as a haven from the pressures of the competitive world depends upon the availability of the spouse to provide emotional support and comfort besides meeting the consumption requirements of family members. This also may suggest why the increased rise in failed marriages is accompanied by a statistically significant increase in the proportion of women who initiate divorce proceedings. Women who can support themselves outside marriage may perceive the disparity of roles within marriage as an imposition. If the burdens are perceived as disproportionate to the satisfactions of the relationship, or if the burdens are perceived to fall disproportionately upon one individual while the benefits accrue to the other, the marital relationship itself may be perceived as lacking in reciprocity. The fact that women presently seek to terminate marital relationships more frequently than do men, a trend which is increasing significantly among younger couples, the fact that divorced women tend to make a more successful emotional adjustment to single status and repartner less frequently, and that, despite this, they continue to seek custody of the children of the marriage to a more significant extent than their former spouses, suggests that the lack of emotional support may be as important in their decision as the inequitable division of domestic responsibilities.

The most significant aspect of the trend towards divorces initiated by women is the absence of any parallel indication that women are increasingly willing to relinquish the care and custody of children following divorce. Thus, the present indicators suggest, not that women are generally taking a more instrumental and less obligatory view of their relationships as a whole, but that they are becoming dissatisfied with non-reciprocal relationships with non-vulnerable others. Where a marriage partner is perceived as fully capable of meeting his own needs and of assuming equal responsibility for the care of vulnerable members of the household unit, and fails to do so, he may be seen as making illegitimate demands, as perceiving his comfort and his satisfaction as of greater importance than that of his spouse. This, in turn, suggests that a need exists for a fundamental alteration in the way the home is perceived and for a reassessment of the obligations which exist in family relationships. Where the household includes children, both parents have, *prima facie*, an equal and shared obligation to provide care and nurture and an equal and shared obligation to provide economic support. Recognising this means that men will be compelled to relinquish a portion of their traditional independence and leisure, just as it means that women will be compelled to become more independent and relinquish a part of their traditional absorption in caregiving and nurturing activities. Such changes can and will have a significant influence only when part-time employment and job-sharing become norms in the marketplace, and when present presumptions concerning career paths and fitness for promotion are radically restructured. Where opportunities have traditionally been structured in a way which effectively ensures that those who pursue them must adopt an irresponsible attitude towards their basic relationships with others, if the opportunities themselves cannot be restructured to alter this, they ought only be available to those who have no conflicting responsibilities, that is, those without families. Since such positions compel those who occupy them to behave as if they have no competing responsibilities, it seems preferable to ensure that social reality reflects this. Otherwise, since many of the men who currently occupy such positions and collect commensurate financial rewards also have obligations towards spouses and towards children which are degraded and denied by being collapsed into the provision of resources, personal irresponsibility is encouraged and deemed acceptable. Such individuals are encouraged to regard their spouses and families as conveniences and comforts, and thus as their property. Such a requirement might well bring home the nature of the choice being made, and raise questions as to its worthiness as a mode of organisation for human communities.

Much of what has been written emphasises the social changes necessary if equality for women is to be realised. These changes may be found at every level, in family structures and role expectations, in education and employment, in access to positions of public power and authority. Changes in any one of these areas have

the capacity to spread into other areas. If expectations in the home are gradually altered, if men assume a more expressive role, women are simultaneously freed to play a more active role in work outside the home and in community and political activities. Equally, as women play a more active role in work outside the home, they may see themselves as entitled to demand that men provide them with emotional and physical support and assume an equal role in the parenting of children. Both of these changes depend in part on changes in workplace structures and expectations, changes which both respect the needs of female workers - for example maternity leave and guaranteed employment thereafter when desired - and provide benefits to both male and female workers such as parenting leave, leave to care for sick family members and more flexible hours and task structures. Still more important are improved benefits for part-time work and recognition that normal career paths for both men and women will be interrupted rather than linear. Such changes will involve alterations in political attitudes and improved ways of acknowledging that all normal individuals have obligations to a variety of others which must be discharged and that as citizens they are entitled to support in discharging their obligations and to redress should others fail to meet obligations owed to them. Access to employment opportunities is a small part of what is required. The real issue is participation on an equal basis for both men and women in all cultural institutions: the family, social, cultural and intellectual activities, economic activities and political life.

One of the most significant features of the analysis offered above is its assertion that parent-child obligations are primary and the reciprocal rights and obligations of the parents derivative. Every parent, biological or legal, is under two basic obligations to all of his or her children who are legally or socially unable to fend for themselves. The first obligation is to provide the socially necessary care, supervision and opportunities for growth and development or to acquire the services of others to perform these tasks on a basis appropriate to that society. The second obligation is to provide the resources necessary to obtain food, shelter, and other goods. Our society is problematic because it treats these obligations as gendered. Many of our traditions suggest that only women are morally obligated to directly provide the care and nurture required by children while only men are morally obligated to provide the resources needed to secure food, shelter and other necessary goods. This dichotomy became ossified during the latter part of the last century and the first half of this century. Strikingly, the scope of activities seen as properly belonging to the household contracted during the same period.

It is well to remember that the English word, economy, comes from the Greek words *oikos*, meaning house, and *nemo*, meaning manage. In ancient Greece, the critical distinction was that between the *polis*, the province of citizens, and the mundane world of the household where women, *metics*, and slaves toiled to ensure

that a select group of men enjoyed the leisure necessary to enable them to act as citizens. In many ways, very little has changed. Women continue to labour to provide men with the leisure required to maintain their public life, and the possession of leisure continues to be the key to truly human status. In other, more significant ways, everything has changed. In the Greek world, the household was the centre of productive activity. Management of the household was 'management' in the true sense. Labour was organised, tasks assigned and supervised, accounts kept. The household included all those who produced the goods and services necessary to produce the life of the citizen. While the household was private, by contrast to the *polis* which was public, and the citizen undeniably 'head of the household', the consequences of the public/private distinction were very different. First, there could have been no *polis* without the household. The life of politics, of the mind, of the essentially public spaces of the forum and the theatre, would have collapsed and vanished without the skills and labour provided by those unfit to be citizens. Second, the managerial and organisational skills required if the household was to function smoothly and productively were substantial. Thus, despite the inferior (and, indeed, irrational) status of those responsible for the management of the household, its management offered scope for the utilisation and development of many different capabilities. If, to the citizen, it meant only his comfort, well-being and leisure, in a word, his freedom to devote his energies to more worthy tasks, it did offer a multi-faceted and economically productive domain to those within it.

The traditional household idealised today is very different. Economics has been removed from the household and installed firmly in the public sphere. Indeed, it is not inaccurate to suggest that the modern state is equivalent, not to the *polis*, but to the *oikos*. Within it a professional managerial elite exercises the skills required to maintain productivity and to sustain the now residual *polis*. Economic activity and management of resources are wholly institutionalised, controlled by professional bureaucrats. Ensuring that all individuals have access to adequate food and shelter is seen as a public responsibility. The education and training of the young, the care of the ill and the aged, the production of basic goods and services are seen as properly carried out by institutions. Even reproduction - that is, pregnancy and childbirth - is defined as a medical problem requiring specialised institutional care. The meaning and significance of political life have altered as well. Politics is no longer the proper activity of citizens, but, in a curious bifurcation, confined to the ritual displays of professional politicians and the attempts of various interest groups to control the political process. The diminished role of political activity is illustrated by the contempt in which politicians are (deservedly) held and by the perceived need either to make voting compulsory as in Australia or confront the fact that, as in the United States, less than two-thirds of the population consider participation in the political process worth the minimal effort of attending the polls.

The modern 'household', in popular ideology, a nuclear family occupying a detached split-level house in the suburbs, is even more curious. Deprived of any productive function, gradually yielding up the majority of its social functions to the corporate welfare state, its continued existence has become increasingly precarious. In many ways it resembles a vestigial organ like the appendix, noteworthy only when it becomes diseased. What is this modern household? It is the domain of mothers and of children too young to be absorbed into wider public institutions. For all practical purposes, it has only two functions. Its first function identifies its increasingly residual role in the reproduction of future generations. Within it, the mother provides for the care and socialisation of children until they are ready to take the places prepared for them in appropriate institutions, and the father provides the necessities of life for those too young to secure food and shelter for themselves. Its second function is the production of leisure for (male) members of the various productive and bureaucratic hierarchies which comprise the *oikos*. Both these residual roles are threatened as women abandon the 'modern household' and seek to reclaim their traditional place in the *oikos*.

As ideology, the image of the 'modern' traditional family remains essential to the liberal state, even while the inherent demands of liberal theory for liberty and equality contribute to its demise. The family defines the only private space and freedom available to the petty functionaries of the *oikos*. Protection of this private space is central to the liberal claim to tolerance. It is because the family continues to exist as ideology that such basic demands as freedom of religion, freedom of association and privacy can be given content. While the corporate social welfare state has restricted its functions, and must continue to do so if it is to make good on its egalitarian claims, the asserted 'naturalness' of the roles within the family serves as a barrier against the moves towards equality which characterise wider institutions. Within the *oikos*, egalitarian pressures are gradually diminishing freedom of association. In the United States, Blacks and other minorities have gained at least formal access to schools, clubs, unions and other employment based associations. Tax deductions are denied to religious schools and universities which discriminate on the basis of race. In Australia, the strength of the privileges accorded private schools, religious or otherwise, and the classist nature of the society in general, has protected the prerogatives of such schools to a far greater extent than in the United States with its emphasis upon state provision of education. Such schools remain free to discriminate and to inculcate roles based upon traditional beliefs about family life and the roles proper for men and women. Because of this, education remains closer to the private sphere in Australian society and serves as a potent social reinforcer of traditional class and gender roles. Effectively, it functions as a bridge. In other areas, however, change is occurring. Male clubs are gradually being compelled to admit women on equal terms. Women

are moving into a wider range of public roles. Affirmative action programs are aimed at increasing the participation of those traditionally denied access on equal terms in all areas of the marketplace. As these developments occur at an increasingly rapid rate, and as they become increasingly threatening to the traditional prerogatives of men, anger is displaced from the threat to masculine status posed by women in public life and in the workplace to concern regarding the destruction of the family. Within the family, traditional roles can be affirmed and freedom of association maintained. Because the family will soon be the only remaining private space, moves which threaten its traditional autonomy and integrity reap increasing abuse. The angry reaction of many individuals to laws prohibiting rape in marriage and to increased public willingness to intervene in 'domestic disputes' and prosecute offenders in this area reflects the intimate connection of the family with male powers and prerogatives. Many of those who speak out against such laws identify accurately their cause for concern, the weakening of the authority of the husband and the father. Given the hierarchical nature of the wider society, and that, for many men, their position of power within the family represents the only forum in which they may exercise the prerogatives of authority, this is hardly surprising.

In this context, the assertion of the feminist movement that the personal is political becomes critical. It threatens, not only the entrenched inequalities in traditional gender roles, but the value systems within the wider community which sustain and support these roles. If traditional patterns of family life play, as seems inescapable, a critical role in reproducing and perpetuating inequality, and if, as egalitarians assert, the inner meaning of liberalism commits us to seeking to ensure that each individual is guaranteed basic social goods such as independence and fair equality of opportunity, these institutions cannot coexist in their present form. The value structures which support traditional gender roles, structures which derive support and nourishment from religious beliefs and cultural traditions, are incompatible with liberal ideals. Yet, seeking to eradicate these, and thus to strike at the roots of inequality and injustice, would also destroy the cherished distinction between the private and the public. Liberalism cannot affirm values such as equality, liberty and independence and maintain the private/public distinction simultaneously. Neither can it destroy the public/private distinction in pursuit of equality, liberty and independence without also destroying those values themselves. Forcing liberal society to live up to its professed ideals would reveal their internal incoherence. The internal coherence of liberal theory depends upon maintaining and supporting its patriarchal roots. If the patriarchal structures upon which its logic depends can be restored, the ideals remain viable.

This conclusion is significant. If correct, modern egalitarian liberals such as Dworkin and Rawls do well to avert their gaze from the implications of liberal

ideals for fundamental human relationships. Such ideals were never intended to apply to 'natural' relationships such as those between spouses and between parent and child. Such relationships are devoid of political implications. Insofar as they are shown to have a political face, as when oppression within the family is recognised and rape becomes possible within marriage, the wall between public and private has been breached. Likewise, if women are allowed a public role, it becomes essential to ensure that they are seen to occupy this role as surrogate men. Allowing redress for sexual harassment, legally requiring the provision of maternity leave, in short, any acknowledgment that these public persons are female, also breaches the wall between public and private. The central problem liberalism faces today is how, given the legitimate demands of women for real equality, not simply liberal equality, the genie can be restored to its place in the bottle of the family.