Restoring The Fragile Family:

Children and The Lost Meaning of Marriage

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Part I: The Changing Culture

Introduction

The Revolution That Ate the Children

In the last 30 years a revolution in marriage and family life has overtaken Western civilisation. This has not gone unnoticed. As the revolution and its consequences have gathered pace, an avalanche of social and economic studies has documented the changes and commented on them. In the popular media, the transformations of law, custom and conduct have been keenly noted and reams of opinion published on what they mean and whether or not they should be welcomed or resisted. For many, perhaps most, they have been welcomed as expansions of individual liberty and the loosening of legal bonds and informal constraints in matters of marriage, sexual behaviour and gendered roles which, for generations, have defined family life, the relations between the sexes and 'appropriate' male and female conduct.

Nevertheless, as the new freedoms were celebrated and lived, some began to notice that all was not well with increasing numbers of children. As family life became less stable in the face of more divorce and more ex-nuptial parenting, the effects upon children became objects of serious study by psychologists and sociologists. By the 1980s and 1990s, it was clear that the care and effective socialisation of a great many children were at risk. For more and more children, the family, as a 'haven in a heartless world', was no longer a routine experience. For adults, an enduring marriage became ever more elusive. Marriage, as an aspiration for permanent bonding between men and women, is still with us, but the reality is an entrenched, high rate of divorce and resort by increasing numbers to the even greater instability of cohabitation. Marriage is not what it used to be. The evidence that this is a profound loss for more and more adults and children grows by the day, and recording that evidence is part of the task of this book. For Australian society,

the manifest decay of family life has reverberations – in welfare costs, in rising crime, in suicide, in illness, in disorder and violence - that go beyond the distress and disappointment of those directly affected by the falling apart of a family.

We may pick up a newspaper almost any day of the week and find a news item or an opinion piece that reflects a family problem of one kind or another. Maybe it will concern a father, separated from his children, who has snatched them from the custodial mother; or a sole parent mother who has abused her child; or an attack on the Family Court; or children of divorced families doing badly at school compared to children from intact families; or a girl who has run away from her step-family to live on the streets; or statistics showing that boys from broken homes are more frequently implicated in suicide, juvenile crime and delinquency; or a national birth-rate that has fallen well below the level needed to maintain the population. For the student of family trends over the last 30 years, such things are neither new nor surprising. Fundamental to most of these developments has been the growing instability of the nuclear family of two natural parents and their children. This has been the outcome of many things; such as increasing sexual liberality and convenient and reliable contraception; the disappearance of the stigmas attaching to premarital sexual intercourse, abortion and ex-nuptial parenting; cohabitation outside marriage; the debasement of marriage in public policy and the granting of equivalent status in many respects to non-marital relationships; the growing economic self-sufficiency of women and the entry of mothers into the workforce; relative increases in family taxation; the advance of the welfare state and the introduction of sole parent pensions; and easy divorce following major changes in family law. All of these might themselves be seen as manifestations of the restlessness of the political, social, economic and cultural forces that compose the Western *zeitgeist* in the modern era. Even the notion of 'family' presents problems of definition unimaginable to earlier generations as step and blended families proliferate, as it becomes easier and accepted for more women to raise children on their own, as cohabitation increasingly displaces marriage, as homosexual partners agitate for married status, as patrilineal descent (the custom of adopting the husband's, i.e. paternal, surname) is challenged, and as IVF and anonymous sperm-donating for heterosexual and homosexual couples increase.

'…and we're here to help you.'

One of the remarkable features of these changes – so many of them made on ostensibly liberal grounds of removing legal restrictions and the scrutiny of the state – has been an outcome whereby the state has never before been so involved in marital and family affairs. It now regulates, supports and pays for a variety of activities in trying to sustain marriages and families, in mitigating family breakdown, and in caring for children, that used to be unnecessary or handled privately. The federal government, for example, is heavily involved in 'educating for marriage'; in financially supporting divorced or never-married sole parents; in paying for abortions, divorce counselling and mediation; and, more recently, in providing millions of dollars for 'children's contact services' to help maintain contact between children and parents who are no longer living together. In pursuit less of principle than convenience, the federal government has facilitated easier, quicker and cheaper divorce by establishing a magistracy of the Family Court that can hear divorce applications and deal with them more quickly at less cost than judges. Unsurprisingly, the new magistracy has been inundated with applications (*The Sydney Morning Herald* 2001). Additionally, the 2000-2001 Federal Budget has set aside scores of millions of dollars for:

a 'Stronger Families Fund' to support parents and care for young children;

'Early Intervention Parenting and Family Relationships Support';

'Greater Flexibility and Choice in Childcare';

'Communicating with Families'.

Worthy and well-intentioned as they may be, all of these activities and expenditures will, at best, do no more than deal with the symptoms of a range of marital, family and childhood problems. For the causes lie deeper in the cultural, economic, social and legal changes which have overtaken family life over the last 30 years. Paradoxically, the family is the site of both comprehensive intervention and, as some of its problems suggest, neglect and subversion.

Climate Change

It is change at the macrolevel which has created the symptoms that government now seeks to address at the microlevel. These symptoms reflect the way in which the state, in combination with other forces over 30-odd years, has steadily created a macro-environment for family life which has helped make unemployment a way of life for thousands of parents; which has drained the family of parental authority; appropriated ever greater proportions of the earned incomes of formerly independent, self-supporting families; redistributed the proceeds to a remorselessly expanding welfare system which perversely induces dependency; substituted welfare grants in partial reimbursement for the taxes taken from family incomes; made it necessary for many mothers, who would have preferred to choose otherwise, to go to work in order to maintain family income levels; and subsidised, as part of the mother-work system, a child care industry in which hundreds of thousands of infants spend many hours each week living an emotional half-life. It has legislated away the dignity and the material and moral substance of marriage while elevating the status of the unmarried partnerships that are replacing it. It is highly probable that many of the women attracted into the workforce to help support their children are now providing, in tax-paid public sector services such as nursing, child care, schooling, and care of the elderly, much of the work that was formerly directed to home production (Carlson 1998: 4).

In the modern vicissitudes of family life, the changed character of marriage is both an effect of multiple causes and, in its altered state, a cause itself of manifold consequences which feed back into its further weakening. Marriage, as the ordering core of family life

and long-term relationships between men and women, is pivotal. If family life today is cause for concern, it is logical to look to the state of marriage as an important contributor. One might say: 'Whither goes marriage, so goes the family'. Yet the local causes of change need to be put in context with the tides of cultural and economic change which have affected marriage and family life throughout the Western world. What has happened to family life and marriage could not have taken place except in an environment of new ideas and sentiments arising from the perpetual intellectual ferment that has characterised Western culture since The Enlightenment. The period since the 1960s can be seen as a particularly active one, especially in what might be called 'liberation movements'. We will have occasion to look more closely at some of those that have been particularly salient for the traditional family.

'It's the morality, stupid'

In this generation we have witnessed a shift in moral attention away from questions of inter-personal responsibility, of promise-keeping and obligation, of our duties to others as individuals, and towards what we might call intergroup responsibilities - to what is owed to people not as persons but as members or representatives of social groups. The language of conduct and moral relations is less marked by words like 'honesty', 'good faith', 'betrayal', or 'loyalty' and more by the language of rights, especially group rights, or 'human' rights (rather than 'individual' rights), and more by a pervasive non-judgementalism for interpersonal transgressions but severe judgementalism for inter-group transgressions. Standing above all other words in the modern moral lexicon is the word 'discrimination'.

The focus of moral concern nowadays is 'anti-discrimination'. Behavioural codes and stifling regulations about 'affirmative action', 'unfair discrimination', 'unfair dismissal', and 'racial vilification', administered by 'human rights and equal opportunity commissions', have proliferated and stand ready to snare the unwitting as tribunals and bureaucracies, responding to the incentives to enlarge their reach, power and importance, search for victims and offenders. The civil norms that used to hold us together have been

replaced by regulations that push us apart. What we seem to be witnessing is a strange synthesis of a form of collectivism expressing itself as authoritarian social moralism existing side by side with a permissive, hedonistic and solipsistic private morality. It is a socialism not of the centrally-managed economy but of centrally-managed equity, understood as universal, state-administered absence of discrimination in matters of race, culture, sex, mental or physical attributes, and even ways of life (O'Sullivan, 2000). Under the banner of anti-discrimination, intervention in social and cultural life acquires an air of moral rectitude, and no institution is left untouched and uncriticised except the agencies of inquisition and enforcement. Nor is there any test of policy failure. If gender imbalances in employment persist, the reason must be insufficient assiduity in implementing regulations or the need for more of them. If poverty still occurs, more redistribution is the only way to solve it. If inter-racial resentments arise over 'affirmative action', multicultural policies must never be the cause, but always the solution.

Paradoxically, as public morality has become more trivially authoritarian and intrusive in protecting group 'victims', the ideology of individual liberation from social constraints and release from individual responsibility has gained force. This has been especially so in sexual matters and male-female relationships, including marriage. It is no longer seen as fitting that conduct in these areas and its consequences, including consequences for children, short of abuse, should be subject to civil censure or stigma. One must never be 'judgemental' or 'moralistic' - except about the conduct of those suspected of 'discrimination'. The result is that failure to fulfil obligations in such matters is no longer cause for public attention, least of all the attention of the law. With the exception of violence against women, conduct within marriage has become a morality-free zone in which neither the law nor censure have parts to play. The old morality of marriage emphasised, and expressed in the traditional words of the marriage ceremony itself, a solemn assumption of obligations by husband and wife arising from the free choice to marry. The new morality emphasises the primacy of individual fulfilment and autonomy, and untrammelled exit on request (McDonald 1988). Many students of family life and marriage have noted the incongruity between the continuing wish of the unmarried young to marry and have a committed relationship and the increasing refusal, when married, to

tolerate dissatisfaction (Woolcott and Hughes 1999: Amato and Booth 1997). Yet studies of enduring marriages show that toleration of foibles and upsets is crucial to long-term satisfaction (Woolcott and Hughes 1999:22). In short, when the disincentives to exit are lessened, exit becomes more likely.

There can be no serious discussion of marriage, its meaning, and its future, which does not focus upon the need to strengthen marriage as the foundation of family life and the best care of children. In marriage, and in family life generally, human conduct raises moral issues of central importance over which we may disagree, but to pretend that we can be advocates of one or other form of preferred conduct in these matters without raising issues of morality is idle. The key to finding the meaning of marriage lies in taking its ethical character seriously in custom, behaviour and law. The institution of marriage and the laws that enforced its rules used to do that. Yet in this generation governments have abdicated the role of institutional protector. While governments have no duty to conserve that which has become obsolete and devoid of value just for the sake of conserving, they do have a duty to protect justice and moral probity in an institution that continues to represent a central aspiration in the lives of the overwhelming majority of men and women. If that duty is abandoned, marriage as we understand it must simply disappear, and with it the possibility of men and women being able to achieve, in orderly and predictable fashion, a human consummation that has eluded many but which has blessed the lives of untold millions and provided the best of all havens for children.

Masses of disparate individuals cannot regularly and confidently achieve such consummations by themselves. Even if some, here and there, were to create the simulacrum of marriage, they could not, by themselves, sustain or pass on what they have accomplished to future generations. The means of achieving that, consolidating it, and passing it on, are essentially social and cultural artefacts and must therefore find an institutional home if they are to survive. Survival depends upon sustaining and perpetuating the rules and norms of behaviour which *are* the institution. Custom, stigma and punishments by elders may achieve that in a tribal community, but in a 'great society' composed of millions of individuals it is impossible without the support of

formal law which recognises and enforces the voluntarily-accepted range of duties and obligations. There can be neither individual liberty nor justice in the relationships between persons if there is no delivery of that which has been freely promised to another, or if there is silence when such promises are broken. One of the burdens of later discussion will be to bring to the surface the ethical character of the marriage relationship and the rules which, in fairness to the parties, must be upheld if that character is to be retained and perpetuated. Ultimately, if the argument is accepted, we are dealing with issues of justice and the rights of citizens and children which only the state and the law can effectively protect.

To marry or to have a child is to assume an awesome responsibility to another human being. The whole society has a stake in the extent to which individuals accept and meet those responsibilities. The evidence to be presented here shows that to a greater degree than ever before those responsibilities are not being met. The unhappy consequences are all about us.

Chapter 1

Marriage

We are uncertain nowadays of precisely what we mean when we talk about 'marriage' or 'family'. When a sexual and domestic relationship between two men or two women is offered by some as equivalent to marriage or a family, or when a United States Presidential Conference on the family in 1980 almost adopted a proposal to define the family as any 'two or more persons who share resources, responsibility for decisions, values and goals, and have commitment to one another over time' (Hafen 1998: 99), we realise how confused we have become. Is marriage simply a continuing sexual and domestic relationship between a man and a woman? Is it no more than men and women living together? Or two men or two women living together in a sexual relationship? Is a presumption of permanency a defining characteristic of marriage?

The Australian Family Law Act (Section 43a) speaks of 'the institution of marriage as the union of a man and a woman to the exclusion of all others voluntarily entered into for life'. In the United States, the Uniform Marriage and Divorce Act states:

'Marriage is a personal relationship between a man and a woman arising out of a civil contract to which the consent of the parties is essential. A marriage licensed, solemnized, and registered as provided in this Act is valid in this state. A marriage may be contracted, maintained, or dissolved only as provided by law' (Hafen 1998: 100). It will be noted that this definition draws upon the idea of 'contract'. Later on, we will discuss the extent to which marriage meets the usual requirements of contract.

In all societies of which we have reliable knowledge, some form of marriage exists, but those forms would not necessarily meet the definitions offered above; especially in societies where custom, rather than formal, written law prevails. Indeed, the above

definitions do not exhaust all of the characteristics of marriage or its consequences in our own society. The core or essential ideas in marriage seem to be:

(i)   a continuing sexual and domestic union between a man and a woman (although some societies permit polygyny or polyandry);

(ii)   public recognition and altered status;

(iii)   rules (formal and informal) of conduct within the relationship;

(iv)   responsibility for any children;

(v)   kinship, legal, and customary consequences;

(vi)   dissolution (if permitted) is a public issue.

The building of the institution of marriage as we know it has evolved over many centuries, and its history and character in European nations differ from its character and history elsewhere, even though the concept of marriage as a continuing, socially acknowledged conjugal union between a man and a woman is the common core. In the earliest days of settlement in remote areas of Australia, men and women would sometimes live together in a 'married' relationship without any legal or religious formalities whatsoever, and they may have had children. Often, but not always, they would have this 'common law' relationship solemnised when a priest visited the area or a church was established. In a common law marriage, 'the parties simply agree to consider themselves married' (*Encyclopedia Britannica*, 1999), although that decision was usually socially celebrated or ceremonialised in some way, but frequently without any religious ceremony. In Roman law a couple living together were deemed to be married. In this, and common law cases, however, it was customary for the relationship to be *socially* acceptable only if the couple saw themselves as committed to a permanent and exclusive sexual and domestic relationship. Such social deeming, especially if children were involved, had social consequences for questions of legitimacy, inheritance and descent. In the English tradition, such arrangements were treated as 'common law' marriages when an occasion arose where the relationship had legal consequences for the partners and their property or the well-being and rights of children. Establishing the reality of 'marriage' - understood as a permanent all-inclusive union - was a matter of social and legal

importance. We thus begin to see that being recognised as 'husband' and 'wife', as a conjugal union, required more than being simply 'partners' or 'cohabitors', and in the transition from the latter to the married state public acknowledgment of the altered status was crucial, and carried with it legal consequences for the partners concerned. Additionally, the coming of children and the formation of a family raised the pressure for putting the relationship in a recognised social and legal category and thus in a framework for the apportionment of responsibility for their care.

It can therefore be said that marriage, as a public order for regularising male-female coupling, has existed in every society of which we have knowledge. The history and anthropology of marriage throughout the world reveal multifarious arrangements to serve these ends and to order many functions besides the sexual, romantic and procreational (Aries 1962; Malinowski 1932; Stone 1977; Trumbach 1978; Van den Berghe 1979). In many societies, including the West for some classes and periods, economic and dynastic functions have been prominent, and sex and romance, though rarely irrelevant, have taken second place. It is only relatively recently that the partners have come to exercise free choice of spouses and, in the West in particular, to attach importance to love as a pre-condition of marriage. We find some family systems in which descent and relationships are reckoned through mothers (matrilineal descent) and others, such as our own, where it is reckoned through fathers (patrilineal descent). We are not sure whether any society has had a family system in which the head of the family has been unequivocally the mother (matriarchy), but patriarchy, or family rule by the father, has been common. We find societies where monogamy is the rule and some where polygamy (several wives or husbands) is permitted; some where bride price and dowry are the rule, and many where it is absent. We find tribes or groups where marriage within the tribe or clan (endogamy) is required and some where marriage outside the tribe or clan (exogamy) is obligatory. Nevertheless, marriage, as a socially-recognised bond between 'husband' and 'wife' or 'husbands' and 'wives', with significant social implications prefiguring family formation and continuity, is universal wherever enduring human communities have been studied. It may well be, as Lovejoy argues (1981: 348), that the impulse of men and women to form an enduring bond with each other is genetically

imprinted. If so, it is not surprising that human communities should come to channel that impulse through custom and law to serve social harmony and cultural continuity. Nor is it surprising that rules should emerge to meet disruption of such bonds and management of the consequences.

Marriage in The West

In the West, it was not until the 11th century that Canon Law came to embrace the custom of marriage and to regulate it – to be followed, ultimately, by state monopoly of family law. The role of the Church as guardian of the rules and customs of marriage highlights the perceived moral/ethical character of the marital relationship, while the subsequent assumption by the state of a responsibility to uphold what we might call marital morals through formal law, indicates that marriage comprises a set of obligations of man and wife to each other – and to their children. It also indicates that marriage is a public matter as well as a private one.

In the English-speaking countries, the history of marriage is largely English history. Stone (1977: 4-10) traces stages in the evolution of the English family and claims that by the late 17th century 'the Closed Domesticated Nuclear Family….was the decisive shift'. This was ' a family organized around the principle of personal autonomy, and bound together by strong affective ties'…..(1977: 7). By the late18th century in England the fundamental features of marriage as we understand it were given legal status in the Clandestine Marriage Act of 1753. Prior to that Act, 'common law' marriages were frequent both in England and the rest of Europe. The Act of 1753 established the necessity for a formal religious ceremony to conclude a marriage. The Act was intended to formalise the 'clandestine' or informal 'common law' marriages. Civil, secular marriage was formally authorised by the English Civil Marriage Act of 1836.

A form of divorce (which of course presupposes marriage) was available as early as 1072 through the Ecclesiastical Courts (Sifris, 1998:1).

In all societies, no matter how various the forms of marriage and the kinship, economic and property systems which accompanied it, and reinforced it, marriage at its centre has always comprised male-female bonding and the having of children. Also integral with marriage have been forms of familial connection, descent, and inheritance, obligations to children and kin and, for the great majority of couples, a sexual division of labour. Even today, when Western marriage has reached a stage of advanced attenuation, for the majority of people family connections and duties deriving from marriage still compose a web of binding relationships and sentiments about which a great deal of their lives and some of their most intense emotions revolve. Marriage and family, to a large extent, define lives, apportion roles, establish identity, socialise children, and suffuse the activities of daily life with much of their meaning.

Legitimacy

Accordingly, the importance of the personal, social and economic ramifications of marriage for all societies, especially when children are involved, has demanded that the family unit formed by marriage should be socially incorporated, named, and 'legitimised'. This has led inevitably to the formal involvement of law and custom and the formation of a rule-governed institution with a distinct social and legal identity. Fundamental to marriage throughout the world, as Bronislaw Malinowski put it, is 'the principle of legitimacy' (1932). By this he meant that every child should have a sociologically identifiable father who is responsible for the child and who is socially as well as biologically linked to the child, along with the mother, by marriage. The notion of 'illegitimacy' in the absence of marriage is not evidence of a punitive attitude towards children, but of the need to protect them by assigning responsibility for their welfare. As the concept has been steadily obliterated in the last 40 years, more than one child in four has come to live away from his or her natural father (Buckingham 2000:20). Most of those children have suffered from that loss (McLanahan and Teitler 1999a; Rich 2000; Buckingham 2000). Some radical feminist theory nevertheless seeks to 'legitimise illegitimacy' by 'normalising' unmarried motherhood through a changed 'discourse' on the subject. So Gail Reekie (1998: 187) argues that:

'The starting point of this de-problematising [of unmarried motherhood] project would be to affirm the right of a single woman to bear a child and to make public discourse and government policy recognise that "female-headed families are a viable, normal, and permanent family form, rather than something broken and deviant that policy should eradicate", as Marion Young puts it.'

In fact, of course, this project has to a large extent already succeeded. It is an example of what Peter Saunders has referred to (2000: 3) as the process of steadily normalising the formerly unacceptable:

'When we shift the social norms of behaviour by changing our laws and formal rules to make previously 'unacceptable' behaviour 'acceptable', we do not thereby eradicate 'unacceptable' behaviour. We simply move the line on the moral continuum between acceptability and non-acceptability. Put over simply: What was previously 'normal' becomes 'old fashioned' and slightly quaint; What was previously 'deviant' becomes 'normal'; What was previously unimaginable becomes 'deviant' '.

Our concern here is with Western marriage, its recent history and its nature. I shall argue in more detail later that it has evolved a special character in the West, distinct from simple cohabitation, which deserves dissection in order to reveal how recent developments threaten it and its functional utility. I believe those who contemplate marriage recognise this - if sometimes 'through a glass darkly'. 'Darkly' because that character has been obscured, but not extinguished, by cultural and legal changes. Although custom, religion and law did not create the distinctive sexual union at the centre of marriage, they made it marriage rather than simply copulation. When the law assumes regulatory authority over marriage, marriage becomes vulnerable to the misuse of that authority. It will be part of our task to inquire whether the law has been misused in making changes in family law which are incompatible with preserving the special character of the marriage union and its functions.

The Social and Individual Interests in Marriage

In the history of Western marriage, three interacting themes have shaped its evolution – the social or public interest in marriage and family formation; the bonds of kinship; and the individual interests of men and women in voluntarily forming a unique kind of permanent, multifunctional, conjugal union, with or without an intention to have children.

The social interest in marriage hinges on the potential of sexual activity within marriage to prefigure procreation, the reproduction and perpetuation of the society, and the arrival of new, immature citizens with needs for sustenance, protection, socialisation, and 'location' or 'legitimation' within the social order and kinship system. In most societies, this concern with the social aspects of marriage has been matched by complementary concern with laws and customs intended to protect the individual interests of the marriage partners within marriage. Dynastic and kinship obligations, support by relatives in times of poverty and crisis, and the need to have regard to the opinions and interests of relatives, have also played their part in economic activity and in influencing conduct within the nuclear family. However, within modern Western societies the kinship element has rapidly lost relevance, and kinship, as a modifying force, has largely left the field. What we now find is a view that there are only spousal relations and individual interests at stake in marriage and that when things go wrong the social interest is confined to arbitrating property divisions, giving financial support to the needy, and asking no questions.

In the West in the modern age individual rights and individual autonomy within marriage have been emphasised. Nevertheless, in all cases, the question of successfully and justly reconciling both the social interest and individual liberties and rights arises and demands resolution. This will be a matter of special concern in what follows, but we need first to emphasise again the public character of marriage and the many ways in which societies, through the state, religion, and the law, are implicated in marriage . The Chief Justice of the High Court of Australia, Justice Murray Gleeson (2000) summarises thus:

'The modern law regulates marriage, and the incidents of marriage, closely. Consider three aspects of that regulation: exclusivity, formality, and publicity. Bigamy and

polygamy are crimes, even if they involve no element of deception. A person cannot have two or more spouses at the same time, even though the spouses involved may consent. It is difficult to explain why bigamy is criminal except by reference back to religious doctrine. The law imposes formalities upon entering, and ending, a marriage. Dissolution of marriage requires an order of a court, even when there is no dispute between the parties.

'Entering into a marriage carries with it an obligation of publicity. Even in an age that treats privacy as a human right, especially in the sensitive area of personal relationships, people who want to marry must publicly register their status. Public disclosure of marriage is not optional. These requirements of formality, exclusivity and publicity reflect a view of marriage, derived from religious teaching.'

In Australia, Section 43 (a) of The Family Law Act 1975, refers to 'the need to preserve and protect the institution of marriage as the union of a man and a woman to the exclusion of all others voluntarily entered into for life.' Unequivocally, as federal law, The Family Law Act affirms the public character of marriage and creates, through marriage, not merely a contract (a view I will criticise later), but a status under the law which is non-contractual and which applies equally to husband and wife. In pursuit of the perceived public interest in marriage, that status carries with it a number of specific entitlements, rights and duties - in taxation, welfare, inheritance, the giving and withholding of evidence in a court, prohibitions against husband and wife suing each other for personal damages, care of children, and so on. Such privileges and protections are incomprehensible and hard to justify except as expressions of the public and private interest in securing not simply the rights of the spouses as individuals, but also the integrity of the *union* between them and the implications of that union for any children they might have and for society at large. Laws concerned with children abound as examples of the intimate connection between marriage and its dissolution, and protection of the interests of children.

The State, Marriage, and The Interests of Children

The state, then, is clearly a party in marriage and divorce. It requires a licence for marriage and a formal act of court to dissolve it. The responsibilities of the state and the law to marriage, to spouses and to children, are such as to demand that they be handled with the utmost seriousness. Accordingly, the state, in acting for all of us through the law, has three areas of duty in relation to marriage. It should protect the individual interests of the spouses, it should protect and dignify the special relationship between them which they have voluntarily formed, and it should protect the interests of children entailed in that relationship. The social interest in marriage hinges primarily, but not exclusively, upon the welfare of children. The well-being of adults, and the role of marriage in promoting this, along with social order and the continuity of a civilisation, are also crucially implicated.

No orderly and productive society can persist for long if it does not see to the care, socialisation and education of its children. Some philosophers, both ancient and modern (Karl Marx and Frederick Engels, for example), and some radical feminists and others, have recommended that the state or community take all children at birth and care for, socialise and educate them; and some social orders, such as Sparta, the Israeli kibbutz, and Nazi and communist totalitarians have moved strongly in this direction. But such movements have either withered away or produced horrors when attempted. Only those blind to experience and human nature would continue to deny that, on the whole, children fare best when reared by their natural or adoptive parents. As evidence to be produced later will show, the absence of those conditions, brought about to a large degree by the decay of marriage in this era of broken families and sole parenthood, has underpinned the rapid growth of child misery, neglect and abuse, more social disorder and crime, ruined communities and socially isolated adults. There can be no sustained remedy for this state of affairs unless the state and aroused public opinion move to re-establish the solemnity of marriage. It is observance of the obligations of marriage and parenthood which protects both children and spouses and which proclaims the special status of marriage.

Marriage as an Institution

The impulse of men and women to seek long-term couple-bonding; the importance of the social, personal and child interests involved in bonding through 'marriage'; its subsequent history of customary observance and protection first by the church and canon law and later by the secular state and statutory and common law, combined to create an *institution*. So the Australian Family Law Act speaks of 'the institution of marriage'.

For the sociologist, social institutions are sets or systems of behavioural rules (laws, customs, norms, manners, conventions) which order and coordinate conduct in specific areas of social action and interaction. In these terms, banking is an institution; the free press is an institution; parliamentary government is an institution; cricket is an institution; schooling is an institution; and marriage is an institution. Institutionally appropriate conduct requires obedience to various rules, including formal law and informal customs and conventions. These rules in turn regularise practices sustaining social, cultural and economic life.

We must distinguish between an institution and the *organisations and associations* which enact or instantiate the institutional rules (Kasper and Streit, 1998: 98-100). We sometimes speak loosely and identify an organisation, such as the Salvation Army, or a great newspaper, as an 'institution'. But a particular newspaper or charitable or religious organisation, is really an entity that enacts the laws and other rules governing the institutions of the free press or charity or religion. A court, for example, is an organisation which ensures that the rules of the institution of law are appropriately interpreted and enforced. A school enacts the rules and conventions of schooling. A cricket team enacts the rules of the institution of cricket and an umpire interprets and enforces them. A marriage enacts the rules governing the institution of marriage. No two organisations or associations enacting the rules of an institution will be exactly the same. Each may adopt local or organisational rules appropriate to its particular circumstances and objectives, but it must nevertheless ensure that these rules and objectives are

compatible with the overarching institutional rules. Every bank and every marriage, for example, may have its own peculiarities and routine practices but they cannot break the foundational rules of the institution with impunity.

Institutions, including marriage, invariably have a history, often a long one, reflecting generations of development and fine-tuning of rules. They are repositories of human thought, experience, and tacit knowledge in the functional areas with which they are concerned (Hayek 1960:58-60). The institution's rules and the organisations and associations which live by them are the vehicles that carry this knowledge and experience from one generation to the next.

Institutions save us the trouble of having painfully to re-invent the wheel in every generation. This handing down from generation to generation demonstrates the cultural character of institutions. Institutions *economise* on knowledge and information. In addition, the establishment of predictability of conduct and trust between social actors through expected adherence to rules known in advance, and therefore the achievement of their plans, are among the most valued outcomes both socially and individually, and vital conditions of the institution's continuity. When the rules are not enforced or become incoherent, coordination and trust will begin to break down, the institution will decline and its functions will be ill-served or will disappear. For these reasons, all institutions require formal and informal sanctions of various kinds to eliminate or minimise rule-breaking conduct. Without them, the regular and broadly predictable behaviour in conformity with rules will disappear and the institution will no longer function effectively. As with the evolution of species, the processes of variation, selection, and retention of what works yield a viable organism. The current proliferation of a range of marriage and family problems suggests its present rules have become incoherent and now subvert at least some of the functions of the marriage institution.

The Decline of Marriage

If we go back a century or so and compare the divorce rate then and now, the difference is barely imaginable. In the 1880s, the annual rate of divorce was about 0.1 divorces per 1,000 of the population. By 1960 that figure had increased sixfold to 0.6 per 1,000. Forty years later, by 1999, that rate had more than quadrupled to 2.8 divorces per 1,000. At the present time, nine marriages out of every twenty can be expected to end in divorce (ABS 1999a).

(Figure 1*******.)**

The institution of marriage as a stable partnership is plainly in decline. Nevertheless, the inherent human urge for male-female coupling and home-formation over an extended period is still active and expressing itself either in marriage or in other arrangements.

'We Don't Need a Piece of Paper': The Rise of Cohabitation

It is beyond the memory of most now living how unusual cohabitation in Australia was until well after the end of World War II. In the West generally it was regarded as scandalous. In many non-Western countries it still is. Bearing in mind the reality of informal or 'common law' marriage in earlier times which might nevertheless be socially approved, Sarantakos observes (1984:153):

'Throughout history, there had never been a time when living together unmarried was generally approved of by the community as an acceptable way of life. As a rule, this life style was considered as an abnormal deviant, and immoral relationship, which in any case only the wealthy and powerful people could enjoy. Marriage was the only "right" way of establishing a family'.

When, about the mid-to-late 1970s, cohabitation was becoming noticeable as a regular phenomenon, those expressing misgivings were assured that its benefits justified a more liberal and tolerant attitude. Cohabitation or de facto marriage, it was put, should be regarded benignly as a 'preparation for marriage', an opportunity for a young couple to

set up house together and get to know each other better before 'tying the knot'. Rather than plunging straight into marriage and find out too late that they were unsuited for a permanent partnership, cohabitation was the liberal and rational answer to exploring a sexual relationship rather than contracting a disastrous marriage in ignorance. Pre-marital cohabitation would lead to steadier, happier marriages in the long run.

Indeed, the increasing prevalence of cohabitation has been hailed by some as reassuring – as evidence that the decline of marriage is being offset by the advance of cohabitation, and that the informality of cohabiting relationships is no cause for worry because such relationships can be as strong or stronger than formal marriage. The minimal restrictions of cohabitation and the relative ease of release from it (but now becoming more difficult) were seen not as cause for concern, but for celebration - as in tune with the liberation from 'middle-class morality', based on sex and companionship without obligation, that marked the revolution of the 1960s. Cohabitation is freedom; marriage is bondage. As divorce has become much more easy and frequent, but its traumas more common, cohabitation may be seen as an acceptable alternative and less traumatic if it fails. Nowhere more than here has the morality of the cultural revolution, aided and reinforced by highly reliable and convenient contraception, become so entrenched, routinised and beyond criticism, especially for the young.

In his extensive investigations of cohabitation in Australia, Sotirios Sarantakos (1984: 1994.) distinguishes three kinds of cohabitation: 'trial cohabitation', which he sees as confined to premarital unions of young people which may not necessarily be predicated on eventual marriage; 'liberal cohabitation' a way of demonstrating liberal attitudes rejecting marriage; and 'de facto' cohabitation common among the formerly married middle-aged and the aged in which marriage is rejected, but not for reasons of ideology or principle.

In the last 20 years the rate of cohabitation has tripled. The Australian Bureau of Statistics calculates that 69 % of all marriages today are preceded by cohabitation compared with about 23 % in 1979. As at June 1999, the Bureau estimated that 861,800

people were living in a de facto marriage, most of whom were under 35 (68 % were men and 77 % were women) (ABS, 1999a).

The Instability of Cohabitation

In recent years there has been no shortage of concern about increasing divorce and its effects upon both children and divorcees. That concern has not been matched by concern about increasing cohabitation and the effects of failed de facto relationships. The average duration of marriages that end in divorce is about 11 years (ABS 1996:37). However, research supports a view of cohabitation or de facto relationships as even more unstable than marriage - with less commitment, more conflict and higher rates of breakdown than registered marriages. A British study found that under 4 % of cohabiting relationships lasted for ten years or more (Ermisch and Francesconi 1998). Other findings from this study conform closely to Australian data on cohabitation. The Australian Institute of Family Studies found that 25 % of de facto relationships lasted about a year, around half ended after two years, and 75 % finished within four years. The same study revealed that cohabitees who subsequently married had twice the divorce rate after five years of marriage compared to those who had not cohabited before marriage (13 % compared to 6 %) (Australian Institute of Family Studies 1991).

Interestingly, people who cohabited before marriage were more likely to have a civil celebrant officiate at their marriage (61 %) than a minister of religion (39 %). For those who did not cohabit before marriage the reverse was the case, with only 29 % choosing civil celebrants and 71 % choosing a minister of religion (ABS, 1999a). This clearly confirms what many commentators have observed – that cohabiters are a self-selected group with a more or less common set of values. This is obviously in the ascendant when we remember that 69 % of men and women cohabit before marriage (but this does not include those couples who cohabited but did not marry). It also indicates the diminishing role of religion in life and its perceived irrelevance to moral choices and significant life events. Catholics have a lower propensity to cohabit, suggesting a more enduring attachment to religious expectations (ABS 1999a).

However, the figures on rates of breakdown of cohabiting relationships must be seen in the context of what cohabitation means for its participants. Of the three types of cohabitation described above by Sarantakos, it is not surprising that his category of 'trial cohabitations', mostly by young people not necessarily committed to marrying their cohabiting partner, should have high rates of breakdown compared to marriage. This is what one might expect. It is likely, however, to be a factor in higher rates of breakdown when these young people do eventually marry. Sarantakos has presented Australian evidence showing that levels of dissatisfaction among those who had cohabited before marriage were three times higher than among those who had not cohabited before marriage (1994). Cohabitation is therefore shown to be an unpromising prelude to satisfaction in marriage. Higher rates of breakdown, compared to marriage, are likely to be the case for Sarantakos's category of 'liberal cohabitors' who see cohabitation as an alternative to marriage. And perhaps also for formerly married, middle-aged cohabitors; but we have no firm figures on this. Keeping these qualifications in mind, the overall, Australian, British and American data indicate that de facto relationships are approximately four to five times more likely to break down than marriages. The presence of children makes little difference. British, European, New Zealand and Australian data show rates of break-up of cohabiting couples with children as varying between two and ten times the divorce rate of couples with children (Morgan 2000:21). However, there is evidence that married partners who shared a first and only de facto relationship have more durable marriages than those who had cohabited more than once (Morgan 2000:28).

Thus, on many counts, cohabitation, especially as an alternative to formal marriage, is different from marriage, and from common law marriage with which it has been compared. Common law marriage is not in opposition to formal marriage but modelled upon it. Before the modern age it was often the poor man's and woman's alternative. It was usually ceremonialised and made public, if not legally and religiously formalised, to declare a commitment for life. For what is probably a small fraction, cohabitation may mimic common law marriage, and may be a substitute for formal marriage for various reasons (financial, for example). But for most who cohabit, the default setting is

separation rather than cohesion, and avoidance of commitment rather than its acceptance. The initiation of cohabitation or de facto living is a private affair for the couple concerned - an arrangement of mutual convenience and rarely preceded by any kind of public declaration or social ceremony. Being based upon romance, sexual inclination and housekeeping convenience without a formal pooling of resources, it is a highly contingent relationship, constantly subject to inconstancy and fluidity of mood and feeling. When love falters, when dissatisfaction occurs, when one's wants change, or when something better turns up, flight beckons and there is nothing external to hold it back, no public commitment, no express compact of obligation, no legal impediment, and no moral censor to deny it.

Cohabiting partners are constantly aware that their relationship is conditional. Indeed, that is why they formed it. Especially for younger men and women, it encourages constant assessment and judging of the behaviour of the partner. It allows speedy and relatively uncomplicated exit. It holds back the very commitment upon which high-investment and enduring relationships depend. This is hardly a basis for the mutual investment and trust that underlie successful marriages.

Effects of Cohabitation Upon Marriage

Zheng Qu proposes 'that the experience of cohabiting itself has a causal influence on marriage timing because the experience may change people's views of marriage and reduce their commitment to the institution'. He also suggests that a cohabiting couple may extend the term of cohabitation in order to reduce uncertainty about each other, thereby delaying marriage (1999:116). Given this demonstrated reluctance to commit to the institution of marriage, and the rise of cohabitation, it is hardly surprising that marriage rates are falling and that age at marriage for both men and women is rising significantly (ABS 1999a). Delayed marriage does not simply mean that people are marrying later and that the marriage rate, overall, will end up much the same; the rate of marriage itself is falling (Bumpass et al. 1991).

In sum, marriage is being rapidly displaced by cohabitation as the normal mode of first male-female partnership. It is followed at a later age than formerly by marriage, but by marriages which are unstable and which break up more frequently than marriages not preceded by cohabitation. The outcome is more people facing the remainder of their lives, or large parts of it, neither in marriage or cohabitation. This is one cause of the significant increase in single person households over the last few years. It is also a significant contributor to falling fertility.

In a study for the Australian Institute of Family Studies, Qu et al. (2000) show a relationship between high rates of breakdown of cohabitation and reduced fertility. The study was based on 2,500 respondents aged 18 to 34 who were interviewed in 1981 and ten years later. Almost 90 per cent of the women said in 1981 that they wanted to have children. Most of them, ten years later, had had children or still intended to do so. However, about a third of those who had separated from a partner no longer intended to have a child. In other words, relationship instability appears to be a significant factor in loss of the desire for children and hence in reduced fertility.

Traditional Marriage and Its Prospects

On the face of it, 'traditional marriage' is steadily disappearing. In the immediate post-World War II period, it was still possible to characterise marriage as comprising the following features and presumptions supported by the marriage vows or matrimonial law:
*Permanency until death;
*Mutual care;
*Sexual exclusivity;
*Legitimation of children;
*Care of children;
*An all-inclusive, conjugal domestic unit of pooled and shared resources;
*Penalties for exit without cause and for marital misconduct;
*Fault-based divorce;

*Division of labour and role specialisation, entailing presumptions of male bread-winning and female domesticity and care of children.

Up to the late 1950s, this conception of marriage was supported both normatively and by the law. Twenty-five years later the situation had changed markedly. Rates of divorce began rising in the 1960s and fault-based divorce was abandoned (in 1976), role specialisation began to change as wives and mothers entered the workforce, the legal concept of legitimation of children through marriage was abandoned, permanency became much less certain, and cohabitation had increased.

Nevertheless, traditional marriage continued to be a lived reality in the lives of a great many men and women, and an ideal still aspired to. Preliminary findings from the *Women's Health Australia* study, involving a sample of 40,000 women, indicate that 85 % of younger unmarried women want to be married, with 11 % opting for a 'stable relationship' (Stephens, 2001). Some 92 % of the women wanted at least one or two children. Today, more than 7 out of 10 men and women will marry. Australian Bureau of Statistics figures on divorce rates show that a bare majority of marriages (54 %) will last for life and the majority of them will have at least one child. Some 78 % of Australian adults believe marriage is for life (Australian Institute of Family Studies 1997:34), yet 46 % of marriages will end in divorce (ABS 1999a). Whatever might be the hopes and expectations of men and women about marriage, the reality is that the prospects for individual marriages have become increasingly bleak.

The Sources of Change

How has it come about that marriage practices have changed so markedly in the space of 40 years while private aspirations have remained attached to an ideal of permanency?

There is no easy answer. In a highly interactive and complex society, many key institutions may change more or less concurrently, with change in one precipitating change in another. A period of high unemployment, for example, may trigger delayed

marriage and reduced birth rates, which may in turn affect demand for housing and schools, which may in turn affect other industries and jobs. The flux of ideas may change beliefs and values which in turn will affect individual behaviour and trigger new political movements. So far as marriage and family life are concerned, then, we must begin by recognising that there is no single source of the immense changes that have taken place, but rather a series of economic and political events and social movements. These have combined to shatter traditional moral attitudes, to alter the economics of family life, to alter attitudes to authority, to overturn long-established conceptions of male-female relationships and roles, and to transform traditional ideas about marriage.

In the pages that follow, I will attempt to chart what I believe, on the basis of sociological and demographic evidence, to be some of the major causes of the changed character of marriage and family life over the last 30 or 40 years. There are still many uncertainties about the precise causal roles of the phenomena to be discussed - of the relationships between what appear to be proximal causes and their distal precursors, and subsequent events. On the key question of divorce rate, for example, the changes in family law are effect as well as cause. Any important social change has many roots in the past and it is often impossible to disentangle a causal sequence with certainty.

All knowledge, all findings and theories based on them, are provisional, and this is what the model on the next page represents. It is a provisional model of the forces of change to which marriage and family life appear to have been exposed in the modern period and the events and changes which have followed. The model is a broad summary and, with a few exceptions, the substance of the discussion follows its outline in trying to understand 'the way we live now' – at least so far as marriage and family life are concerned.

Insert Model "Marriage and Family Life"

Chapter 2

The 1960s and The Western Cultural Revolution

In tracing the beginnings of change in marriage and family life, there are many possible points of departure; but the moral and cultural revolution which began in the West in the 1950s, which became potent and widespread in the 1960s and 1970s, and which finally emerged dominant and entrenched by the 1980s and 1990s has been of prime importance. The way we live now, what we believe now, what we expect and accept now, and the routines of our daily lives, are so drenched in the beliefs and attitudes that had their beginnings 40 or so years ago that even those who were adults then have difficulty in recalling how much has changed. And they have ceased being incredulous about how behaviours that were once excoriated have been embraced in the name of liberation and toleration.

'Liberation' in our era has seen the rise of a multifaceted social movement embracing a loosening of formal and informal constraints on individual behaviour that can be seen as a continuation of the libertarianism of the early 20th century. It has been accompanied by a simultaneous attack on the legitimacy of many institutions and their traditional functions. The underlying ideology giving intellectual substance to this latter development has a complex genealogy. Marx and Engels, for example, writing in the middle of the 19th century, regarded the family as a prime target of destruction. Engel's first draft of the *Communist Manifesto* recommended the deliberate undermining of the family by ending the economic dependence of the wife upon the husband and the emotional dependence of the children upon their parents. They proposed instead the erection of common dwellings for communities of citizens to replace family homes.

The outstanding modern exemplar of the ideology of institutional destruction in the Marxist tradition is the work of the revisionist, Antonio Gramsci (1971). For Gramsci,

writing in the 1920s and the 1930s, liberation of the 'oppressed and marginalised' classes (workers, women, ethnic groups, criminals) could not be accomplished until the 'hegemony' of the prevailing ('bourgeois', middle class) values system was destroyed. These marginalised groups had so internalised the value system imposed upon them from above that they would not accept liberation until those values, and the institutions sustaining them, had been thoroughly de-legitimised and replaced by a new value system. The main targets of de-legitimation were, therefore, those institutions of civil society that harboured and perpetuated bourgeois values and the socialisation of the young. Accordingly, it was traditional marriage, the family, the schools and universities, the media, the churches and voluntary associations, the workplace, art and literature, and popular entertainment, that were subjected to assault from the vanguard of intellectuals who had absorbed the Gramscian theory and program. In the last 30 years that assault, that 'long march through the institutions', has been extraordinarily successful. It was an assault reinforced from another direction. In identifying the family as an instrument of female oppression, radical 'gender feminism' (itself the child of a form of Marxian analysis, to be distinguished from 'liberal feminism') actively contributed to the deconstruction of traditional Western marriage and the family system based upon it.

Concurrently with the attack on the legitimacy of bourgeois institutions in general, and in the name of a more personally-oriented demand for liberation, bourgeois conduct and the moral instruction and habits sustaining it came under assault. It was an assault especially directed at bourgeois sexual morality. It is interesting that when people use the word 'morality' it is commonly sexual morality that they have in mind, even though morality, in the sense of rules or standards of conduct, clearly applies to the whole range of human conduct. The Shorter Oxford English Dictionary (1973) confirms this by giving as a definition of 'moral': 'Moral habits or conduct; also, specifically, sexual conduct'. This perhaps reflects a common perception of the importance and ramifications of sexual morality within a society. Whatever the case, the reality and pervasiveness of the 'sexual revolution' in Western civilisation over the last 40 or 50 years, and its part in a more widespread cultural transformation, is manifest.

Repression and the Joy of Sex

The raw energy and urgency of human sexuality demand expression. The strength of the sex drive is such that without forms of sociocultural channelling and constraint it can rapidly become socially disruptive and sometimes threatening to other individuals. The ways in which societies reconcile human sexual gratification with social order and interpersonal obligations are highly variable. As with marriage, there is no society which has not evolved a sexual culture and sexual mores within an institutional framework governed by rules and sanctions. Indeed, sexual mores in our own society and others have traditionally been subsumed in large part under the rules and sanctions of marriage and the family. Marriage has always implied a sexual union and sexual exclusivity. The limitations on pre-marital sexuality have been seen as part of the process of ordering sexual behaviour within society and recruiting the instinctual power of sexuality to cement the marriage bond. Needless to say, what social rules ordain and what they actually achieve may differ. Adolescent sexual behaviour and the behaviour of non-conforming adults (mainly upper class, aristocratic, bohemian, criminal or underclass) may regularly disappoint social expectations. While there may be no official sanctions applied in such cases, the prevalence of disciplined socialisation, informal sanctions and social frowning by parents and society are usually sufficient to sustain what is expected among the majority of adolescents and adults. This was pretty much the situation in the countries of the West until 1950. A discernible and more or less coherent sexual morality prevailed within the middle and working classes, but it was coming under increasing scrutiny and attack.

The Search for Paradise

What Havelock Ellis had urged and what Sigmund Freud had said and taught earlier in the century finally entered the mainstream in the 1950s transforming sexual beliefs and behaviour. In offering a comprehensive, systematic account of the dynamics of human sexual expression, its distortions, and the workings of the human mind, Freud's influence proved to be pivotal and lasting. Although the formulations of some of his later

expositors would have surprised the master himself, Freud nevertheless put his stamp indelibly upon 20th century understandings of the relations between human sexuality and human behaviour, culture and morals.

Freud had seen the source of many neuroses in repression of the sexual instinct and the consequent re-channelling and expression of sexual energy ('libido') into a variety of physical and emotional symptoms. But, civilised man that he was, he had also argued for the intimate connection between civilisation and sublimation of the instincts, including sexuality. The view, however, that came to prevail in Freud's name emphasised the 'naturalness' and 'originality' of the sexual instinct and claimed that cultural repression of sexuality, represented in institutionalised behavioural restraints and inhibitions incorporated in the 'super ego', crippled natural sexual expression and damaged the ego. A healthy ego was incompatible with the sexual repression or inhibition that the institutions of civilisation required. Liberation of the ego and its health therefore demanded that the chains of repression be removed by revolutionising cultural attitudes and mores in relation to sexuality.

What was overlooked was the questionable validity of the claim that direct expression of the instincts was a more original or natural human condition than their inhibition or repression. Who is to say that the biologically-driven sexual motive is more *original*, more *human*, more *deserving* of expression, than the motive repressing or sublimating it in the interests of upholding a cultural-moral imperative in the form of custom, manners or law? Both sets of motives have their histories, the one in biology, the other in social learning and cultural transmission (which ultimately have biological roots). They have always coexisted and human behaviour has always been the outcome of the struggles and compromises between them. In human experience, the outcome of successful compromise between individual and social needs within a morality and a personality has more often been enriched personal and social meaning and sublime achievement rather than neurosis. The secret is balance, moderation and restraint. How to achieve that without engendering neurosis is more a cultural-moral issue than a biological one.

Margaret Mead's anthropological work in Samoa before World War II was enlisted to show how the supposedly uninhibited adolescent sexual behaviour of Samoan adolescents had issued in happy, well-integrated and unashamed human personalities, unlike the inhibited cripples of Western societies, especially America. This work was enthusiastically and uncritically embraced and used endlessly in the ensuing decades until its utter falsity, and the Samoan reality of a highly structured, closely supervised and restrained sexual life of adolescents, was finally revealed in the 1980s through the work of anthropologist Derek Freeman (1983). But by then Mead's errors had played their part in the program of sexual revolution.

Repression and inhibition in sexual matters, naively ridiculed as 'Victorianism', came to be defined as not only bad and unhealthy but supportive of the evil of political repression and governmental control in general. In fact, there has been no diminution of the regulatory enthusiasms of government as sexual liberation has proceeded apace. We were soon launched upon a revolution of sexual release, of 'permissiveness', and legitimation of unrestrained sexuality independent of marriage (and certainly of procreation with the advent of the Pill and legalised abortion from the 1960s on), that invaded every aspect of the culture and ever younger age groups. The cry of sexual liberation was soon associated with a cry for liberation from political oppression, institutional authority and capitalist exploitation.

Disseminating the Revolution

The demand for sexual liberation, in particular, was carried forward into magazines, newspapers, advertising, radio and television, literature and art, movies and popular music to establish today's public climate of unrelenting, even obsessive, sexuality and pornography, incorporating strong elements of brutality and violence.

When a distinguished newspaper such as *The Sydney Morning Herald*, and the nation's museums, give serious attention to obscene art associated with the Sydney Gay Mardi Gras we are made painfully aware of how much things have changed. The Herald's art

critic, writing in the paper's *Spectrum* weekend magazine (James 2001:13), tells us about the 'militant aesthetic' of Mardi Gras artist David McDiarmid: 'McDiarmid once featured a puckered anus on a poster, changing the world for the better for countless thousands of ordinary, HIV-imperilled people'...…'the poster has since been acquired by several of the nation's museums, achieving respectability as idea and icon'. Later, in the same article, we are told of 'the annual miscellany of gay-themed nudity in art staged at the Seymour Centre', and of the program for which it is said that there would be 'no rules and everything is permitted'. One exhibitor, Fry, 'took this incitement to excess at face value, creating a filmic sequence that included scenes of masturbation, ejaculation, coprophagia and fisting, that last image, apparently, juxtaposed with still shots of infantile bottoms' (James 2001:13).

Such artistic endeavour and its enjoyment may be confined to a minority. But this is not the case with movies and popular television programs. Both are saturated with explicit sex and sexual vulgarity of the crassest kind. In an episode of the highly successful American television series *Sex and the City*, put to air in 2000, viewers were treated to a scene in a living room where a number of young women were assembled to witness one of their number simulating the manual masturbation of a reclining male, which climaxed with the faces of some of the women apparently being spattered with his ejaculated semen.

The cry against repression in favour of sexual liberation has, in the name of freedom of expression, trumped all attempts at restraint and modesty and effected a transformation in values and sexual mores. This has penetrated deeply into the relations between men and women and into family life, not to speak of its often coarsening effects more generally – on ordinary language, for example. Those who resisted or complained, those who sought to defend the decorous and the restrained, were soon silenced by accusations of hypocrisy, conservatism, defence of capitalism and patriarchy, religious fundamentalism, a wish to censor, and sexual 'hang-ups'.

The Hegemony of the Counter Culture

The 1960s, therefore, marked a turning point in Western civilisation. It was then that many of the threads of earlier revolutionary speculation came together both in Europe and the English-speaking world to confront authorities and established institutions with new challenges. In 1962, the Second Vatican Council, called by Pope John XXIII, launched a liberalising transformation of the Catholic Church. The Cold War was intensifying, and opposition to French colonialism in North Africa and the quagmire of the Vietnam War provoked riots, enormous public demonstrations, and the 'radicalising' of the young. But, in the long run, it was less the politics of the time than the moral upheaval which had the more pervasive consequences.

Jon Henley has recently reminded us of the close connection between the sexual and political policies of the radicals of the 1960s and 1970s, such as Jean-Paul Sartre, Simone de Beauvoir and Daniel Cohn-Bendit ('Danny the Red'). These three, along with Michel Foucault, Roland Barthes and Jacques Derrida, by then famous intellectuals and stringent critics of 'bourgeois morality' and Western institutions, were signatories to a petition urging the French government and, by inference, Western states in general, to de-criminalise pedophilia. The state, they argued, 'should acknowledge the right of children and adolescents to have relations with whomever they choose' (Henley 2001). No mere theorist, in an article published in 1975, Cohn-Bendit revealed his 'erotic contacts' with children in an 'alternative' kindergarten in Frankfurt, where he worked. 'Certain children opened the flies of my trousers and started to tickle me', he wrote. 'I reacted differently each time, according to the circumstances…But when they insisted on it, I then caressed them'. Defending himself, Cohn-Bendit describes his article as a 'product of its time, of our anti-authoritarianism; pure provocation, designed to shock the bourgeoisie'. Cohn-Bendit's behaviour has become an issue for his membership of the European Parliament, and the editor of *Liberation*, a left-leaning journal that emerged from the Paris barricades of 1968, has commented: 'The existing moral order was the enemy. The cultural revolution that followed May '68 was a social triumph in many, many ways. But its

discourse on the sexuality of children has served to legitimise practices that are at times criminal' (Henley 2001).

Nihilism and The March Through The Institutions

As with most cultural movements, the vanguard was occupied by intellectuals who provided the leadership, the theory, and the rhetoric. More often than not, they had revolutionary credentials in other fields. Herbert Marcuse, for example, offered a potent brew of Freud and Marx in *Eros and Civilisation* (1956) which counterpointed capitalism and repression to a liberating program extolling instant gratification and the need to destroy bourgeois institutions, including the family – a theme also at the centre of the work of Antonio Gramsci and Michel Foucault in our own times. Foucault, indeed, may be seen as complementing and sealing, a generation later but still within an essentially Marxist rubric, Gramsci's attack on Western institutions. In *The Betrayal of Liberalism*, Kramer and Kimball, long-time students of the intellectual leadership of the cultural revolution, describe Foucault as 'that immensely influential figure' (1999:11).The central theme in Foucault's work is power and its monopolisation by the bourgeoisie. The whole institutional structure of bourgeois society, on this view, is dedicated to accreting, using, and reproducing the power it commands in the service of maintaining its hegemony. Yet this engine of oppression seeks to conceal its real purpose behind claims of legitimacy which are in turn sustained by a fabric of 'discourse' whose central purpose is to deceive and to veil the nakedness of the power which is being exercised. All institutions are therefore to be seen as bogus; as hypocritical; as not entitled to the authority they claim. Unmasking this hidden institutional emptiness and illegitimacy requires the repudiation of all traditions and authorities and unceasing rebellion against every manifestation of its domination within discourse and the whole institutional apparatus – political, educational, religious, moral, familial and aesthetic. Foucault, therefore, may be seen as the quintessential voice – elusive, ambiguous, hate-filled, suspicious, relentlessly antinomian and ultimately nihilistic – of the revolution of the 1960s and an important theoretical precursor and author of the program of institutional and moral delegitimation that marked its ascendancy and still does.

Although Herbert Marcuse was born and educated in Europe, his most influential writings were produced during his life in the United States. He and a number of other influential figures working and writing in America during the 1950s and 1960s, together with Europeans such as Jean Paul Sartre and Simone de Beauvoir, were the principal architects of a social-philosophical movement which revolutionised not only sexual and family life, but also philosophy, literature, scholarship, and the character and role of the universities. It was a transformation affecting Western Europe and subsequently, and more radically, America and Australia.

The Unchained Individual

As America became the cultural leader of the English-speaking world, the intellectual content and practice of the sexual and cultural revolution in Australia was almost wholly derived from American models or from European originals filtered through the United States. The best extended summary of what happened in America, and therefore subsequently in Australia with slight variations, is to be found in Roger Kimball's study *The Long March* (2000). Some well-known names comprise the *dramatis personae* – Norman Mailer, Timothy Leary, Herbert Marcuse, Alfred Kinsey (*The Kinsey Report*), Masters and Johnson, Jerry Rubin, Wilhelm Reich, Norman O. Brown, Eldridge Cleaver, and Susan Sontag. As America steadily assumed world cultural leadership from the 1950s and 1960s, these men and women played a crucial role in defining the moral character of that leadership and hence the moral character of the cultures that came under its influence.

As commentators such as Myron Magnet (1993) and Roger Kimball (2000) point out, the key themes of the cultural revolution were release from restraint, contempt for the traditional, and a narcissistic emphasis on 'letting it all hang out', on 'just doing it', on instant gratification and 'mind expansion' (meaning use of drugs), on shamelessness, and on a fashionable, knowing, cynical and safely leftist style – memorably described by Tom Wolfe as 'radical chic'.

Magnet's major theme is to show that while the clever, the well-off and the highly educated may emerge more or less unscathed from the disordered, indulgent behaviour and the way of life generally which they promoted or followed, to do likewise was fatal to the lives of those less favoured. The real casualties were those who subsequently became referred to as the underclass and the welfare-dependent - victims, so the counterculture told them, of capitalist oppression. In her analysis of the aftermath of the American cultural revolution of the 1960s, Gertrude Himmelfarb (1999:18) makes a similar point:

'Thus the counterculture, intended to liberate everyone from the stultifying influence of "bourgeois values", also liberated a good many people from those values – virtues as they were once called – that had a stabilizing, socializing, and moralizing effect on society. It is no accident, as Marxists used to say, that the rapid acceleration of crime, out-of-wedlock births, and welfare dependency started just at the time that the counterculture got under way'.

The Revolution and the Family

 In Britain, North America and Australia, the legitimation by elite opinion, the media and the better off, of a cynical and derogatory view of restraint and modesty rapidly influenced the essentially bourgeois morality of both the middle and working classes. One curious aspect of this has been the surrendering of bourgeois standards and conduct in entertainment, dress, personal decoration (e.g. tattooing, body-piercing, 'dressing down') manners, and speech (e.g. declining politeness, swearing, coarse language). In speaking of these things, the American social scientist, Charles Murray (2001), relates this process of 'proletarianisation' to the development of an imitative and respectful attitude adopted towards underclass appearance and behaviour, and the penetration of that behaviour into the middle-classes:

'Sexual behaviour? As late as 1960, sleeping with one's boyfriend was still a lower class thing to do. Except in a few sophisticated circles, a woman of the elites did it furtively, and usually with the person she expected to marry. Behaviour that is now considered absolutely normal was considered sluttish in 1960.

'Family? The divorce rate in 1960 was only a notch higher than it had been in the first recorded figures from 1920. It happened among members of the dominant minority, but rarely and with extreme reluctance. As for living together without being married and having babies without marrying the father, language alone conveys their change in status over the years. People used to shack up; now they cohabit. The woman used to have a bastard, then an illegitimate child; now she has a nonmarital birth.'

Himmelfarb makes a connection between the counterculture's attack on sexual restraint and the subversion of the family (1999:54):

'If the state has usurped some of the functions of the family, the sexual revolution has subverted the very conception of the traditional family. Conservatives as well as liberals may be dismayed by the attention paid in recent years to so private and personal a matter as sexual morality. But the reason this has loomed so large is because sexual morality is never a purely private or personal affair. It is at the heart of the idea and the institution of the family. If the family is the primary agent of socialization, the place where we develop those habits of love, trust and responsibility that make us human beings, adultery is a violation of the family, a betrayal of love, trust and responsibility, an act of infidelity and irresponsibility. When Hillary Clinton rebuked those who were making an issue of her husband's affair with Monica Lewinsky, she invoked the claim of privacy. "The only people", she said, "who count in any marriage are the two in it" – forgetting the children who are surely a party to marriage, to say nothing of the integrity and dignity of the family itself'.

Magnet's summing up of the counterculture's charge against repression, and its linking of sexuality to the then-prevailing political and economic order, makes a similar point (1993:17):

'As its name announced, the counter culture rejected traditional bourgeois culture as sick, repressive and destructive. Bourgeois culture's sexual mores, based on guilt, marriage, and the perverse belief that present gratification should be deferred to achieve future goals, were symptoms of its pathology. Its sobriety and decorum were mere slavish, hypocritical conformism; its industriousness betokened an upside-down materialistic value system; its family life was yet another arena of coercion and guilt. This culture went hand in hand with an inherently unjust capitalist economic order, and a political order whose murderousness was plainly revealed by "Amerika's" war in Vietnam.'

And Magnet goes on to say (1993:18)

'Just as you didn't have to frequent singles bars to be affected by the sexual revolution, you didn't have to live in a commune and to eat mushrooms to be affected by the counterculture's quest for personal liberation. The new adversary stance toward conventional beliefs and ideals, breathlessly reported by the press and diffused almost instantly among the young, quickly put traditional values on the defensive, making them problematic even for those who continued to hold to them.

And because the counter culture belonged to the young, its influence has persisted into the present…. . What you believe at twenty, as one historian has remarked, has a way of leaving its stamp on your worldview for life.'

Reverberations

The twenty-year olds of today hold beliefs about sex and sexual behaviour which have been profoundly influenced by the 1960s revolution. This is reflected in the differences between the sexual experience of adolescents and young adults in the early 1960s and

now. Moore and Rosenthal (1993:7) quote figures from British studies by Schofield and Farrell of experience of sexual intercourse by 2000 15-to 19-year olds in the early 1960s. In the 1960s only 20 % of boys and 12 % of girls had had sexual intercourse. Ten years later 50 % of teenagers in a sample of 1500 aged 16 to 19 years reported that they were non-virgins. Other studies in Western countries suggest that by the mid-1980s, at age 18, approximately 70 % of boys and 45 % of girls were no longer virgins. The trend towards more sexual experience in adolescence was accompanied by a trend towards sexual intercourse at earlier ages (Moore and Rosenthal, 1993:7).

By the age of 20 today there can hardly be a young man or woman for whom sex education and immersion in sexual talk and entertainment has not been routine since childhood, to be followed, for many, by considerable adolescent sexual experience. A survey of 3550 Australian adolescents has shown that 55 % of male and 58 % of female 18-year olds had experienced sexual intercourse. It is interesting to note here the preponderance of females over males compared to the study quoted above (Moon, et al. 1999:156). Both sexes have been reared in an atmosphere of sexual preoccupation in the popular culture, with most parents long since displaced as the prime sexual educators. That role has been taken over, in more formal fashion, by the schools. In that more impersonal context and in a non-judgemental but nevertheless morally loaded style, knowledge of sex becomes a biological matter detached from its interpersonal and way-of-life implications. Early instruction in contraception and the physiology of sex largely presupposes pre-marital sexual activity without consequences as a normal expectation. It presents to the young, and legitimises by the mere fact of presentation, a vision of male-female relationships in which 'safe' sexual gratification is foregrounded as a routine expectation of no particular consequence or portent. The reality, to be seen in the escalation of sexually-transmitted diseases and abortion, is very different.

The promise of the 1960s emancipators was a utopia of freedom from hang-ups and sexual repression, 'natural', free and expansive human relationships, and glowing psychic health. It may be that the sexual life of the young is freer of guilt and shame than it used to be, and that relations between adolescent boys and girls are more 'natural' in sexual

matters. But if 'natural' means more instinctual, more impetuous and less bound by delicacy, intimacy, respect, and modesty, that may not be a gain. It is a mistake to brand as hypocrisy the reticence and restraint which are as much the ornaments of a civilised sexuality as of other forms of human behaviour. For the other side of the coin is the disappearance of a more complex, widely-linked sexual culture that was rich in sexual excitement and experimentation of a different, more constrained, more anticipatory and future-oriented kind, where one's expectations of a continuing sexual life had horizons beyond a series of isolated gratifications. Adolescent sexual exploration and experimentation, short of consummation, used to be seen as a less than full-dress rehearsal, a 'courtship'. As adulthood approached, it was inextricably joined to visions of marriage and preparation for it, and of a common life with mutuality and procreation as ultimate human ends. That was a future-oriented linking of sexuality to broader goals, to continuity, and to other satisfactions. That may still be true for a great many of the young, but officially and in the eyes of the progressive elite, that culture has gone, with its departure sped by mockery of the 'the married couple, with white picket fence and two children' as the very model not of a consummation but of suburban incarceration and death of the spirit.

Expectations and Outcomes

The progressive elite would no doubt claim that realisation of the program foreseen by the liberators of the 1960s offers more than the prevailing culture which it replaced. Yet in this generation we are experiencing rapidly rising levels of juvenile crime and violence (Mukherjee and Dagger 1990; Sullivan 1997), adolescent depression (Buckingham 2000:50) drug use, eating disorders and suicide (Moon, et al. 1999; Sullivan et al., 1999). Rates of depression and eating disorders are high among young women. Levels of drug use are high among young men, whose suicide rate has been steadily increasing in recent years and exceeds the female rate by a factor of five (Buckingham, 2000). We cannot be sure of the causes, but such things suggest that a moral space in adolescent culture is being filled by specious substitutes and dead-end pursuits.

Such developments can be seen as part of a pervasive de-moralisation (in a literal sense), especially of ill-educated young men who do not work either because the jobs are not there for them, or because they are unemployable, or because a generous state makes life without work possible and even preferable, if aimless, for some. Sex is readily available, and when a cohabiting female partner becomes pregnant and starts making demands, exit presents no problems. Here again the state is ready to pick up the tab for mother and child - a child disproportionately likely to add to the numbers of ill-educated and often neglected children who emerge from sole parent homes and who grow up to swell the numbers of those for whom work is not an option and crime and drugs a way of life. When sex is readily accessible and utterly divorced from responsibilities for wife, children and maintaining a home, the spur of working for a family is removed for young men. It is ironically probable that the least resourceful, who most need the spur and motivation of unavoidable responsibilities defined as honourable, are those most likely to drift away into idleness, selfishness, and dangerous and self-destructive ways of life.

When, to such a sexual morality, we add, for young men and women, disturbed family backgrounds, high unemployment and high levels of welfare dependency, and the ragged communities in which such conditions are common, we are confronted with a potent brew which also yields high crime rates and pervasive social disorder. In the south-western suburbs of Sydney, such as Campbelltown, Claymore and Minto, high crime rates coexist with such social, moral, and economic factors. Federal Parliamentarian, Mark Latham, recently remarked (2001:21):' In Campbelltown, I represent public housing estates with unemployment rates of 50 per cent and welfare dependency rates of 80 per cent.'

In a study of the correlation between juvenile crime and measures of social and economic stress within communities, Weatherburn and Lind (1997; 2001) found economic stress and child neglect to be the most powerful predictors of juvenile criminality, with neglect being a more reliable predictor than abuse. They comment: 'This result mirrors the common finding among individual level studies that, while neglect and abuse are often found together, measures tapping the level of parental supervision or the strength of the

child-parent bond are better predictors of juvenile involvement in crime than variables tapping the level of family conflict or the harshness of parental discipline (Loeber & Stouthamer-Loeber 1986).' (Weatherburn and Lind 1997:43). In the discussion of their results, Weatherburn and Lind further comment: '...child neglect remains the most salient predictor of juvenile involvement in crime when included in a regression analysis along with single parent families and crowded dwellings' (1997: 44). Sullivan (1997) identified these same factors on a population basis.

We Are Not Alone

In Britain, similar patterns connecting a changed sexual morality with ex-nuptial parenthood or rapidly fracturing partnerships, family disorder and neglect of children are to be found. Norman Dennis observes (2000: 45):

'It is true that for men sexual behaviour freed from consequences has been largely accomplished, and is condoned by public opinion. Contraception, abortion, the sexual liberation of women, the disappearance of the ban on pre-marital sex, and the furious rejection of inculcated conceptions of male honour have all done their liberating work. In 1997 68 per cent of all pregnancies in Liverpool were to women the man had not needed to marry. In Lambeth, Southwark and Lewisham the figure was 66 per cent. In Sunderland it was 62 per cent. Given the efficiency of modern contraception, the number of pregnancies outside marriage is a weak indicator of the extent of sexual intercourse outside marriage. The meaning of a man's marriage has been hollowed out'.

In a passionate essay, another English commentator, Theodore Dalrymple, castigates the emptiness, sterility and morally nihilistic consequences of the sexual revolution and shares the conclusions intimated here. After sketching its history and demoralising aftermath, he says (2000: 35):

'What is left but personal whim in the determination of sexual conduct? It is precisely the envelopment of sex (and all other natural functions) with an aura of deeper meaning that

makes man human and distinguishes him from the rest of animate nature. To remove that meaning, to reduce sex to biology, as all the sexual revolutionaries did in practice, is to return man to a level of primitive behaviour of which we have no record in history. All animals have sex, but only man makes love. When sex is deprived of the meaning with which only the social conventions, religious taboos, and personal restraints so despised by sexual revolutionaries such as Ellis and Comfort can infuse it, all that is left is the ceaseless – and ultimately boring and meaningless – search for the transcendent orgasm. Having been issued the false prospectus of happiness through unlimited sex, modern man concludes, when he is not happy with his life, that his sex has not been unlimited enough. If welfare does not eliminate squalor, we need more welfare; if sex does not bring happiness, we need more sex'. And later, Dalrymple observes (2000: 38):

'The Dionysian has triumphed over the Apollonian. No grace, no reticence, no measure, no dignity, no secrecy, no depth, no limitation of desire is accepted. Happiness and the good life are conceived as prolonged sensual ecstasy and nothing more. When, in my work [as a doctor] in an English slum, I observe what the sexual revolution has wrought, I think of the words commemorating architect Sir Christopher Wren in the floor of St. Paul's Cathedral: si monumentum requiris, circumspice [if you seek the monument, look about you].'

The Family Under Siege

What is true for the English is true also for us, and for the young and adults alike the new moral order that came with the cultural and sexual revolution soon penetrated marriage and family life in Australia. The release of constraints on individual desire, the elevation of choice in the absence of criteria of discrimination, and the turning away from commitments and responsibilities, has occurred concurrently with the retreat from marriage.

When divorce rates began to rise in the 1960s, they were demographically associated with legal changes in the direction of greater liberalisation of divorce law and the

Commonwealth's introduction of uniform divorce law in 1961 which displaced the former state divorce regimes. The most significant change in the law was in 1975 when, following the precedent set in California in 1969 and soon after in other American States, the Australian Family Law Act abolished marital fault as a condition of divorce. Henceforth, one year's separation, considered sufficient to demonstrate 'irretrievable breakdown' of a marriage, was the sole condition for divorce. Divorce rates had been rising slowly before the change in family law, but from 1976 there was a rapid escalation in divorce rates until a measure of stabilisation was achieved in the 1990s - at a rate three to four times higher than in the 1960s. Gruber (2000) claims, in a study for the United States Bureau of Economic Research based on 40 years of census data and the variations over time in the divorce regulations of American states, that the association between relaxation of divorce law and more divorce reflects a causal relationship. In particular, unilateral (no-fault) divorce regulations increased the incidence of divorce by 11.6 %.

It is impossible not to see a connection between the changing sexual morality and legal status of marriage described here and delayed marriage or the abandonment of marriage, and the unravelling of the idea of 'working at a marriage' and braving its inevitable vicissitudes either to fulfil the commitment or 'for the sake of the kids'. As sexual mores changed, as liberation was defined as loosening commitment to rules and to obligations to others, confinement of sexual relations to marriage, and the open-ended commitments which help define it, came increasingly to be seen as oppressive, as denials of what a changing culture now deemed legitimate.

The 'Pill' is sometimes blamed for the change in sexual mores, but this is to put too great a weight upon a technological innovation, important though it was. In making contraception reliable, easy, cheap and comfortable, the Pill simply cooperated with the sexual revolution already under way and, in tandem with frequent failures of contraceptive methods, perhaps hastened the search for better contraception. Nevertheless, the advent of such a revolutionary improvement in contraception greatly increased the *confidence* of women in being able to control their fertility and therefore affected the predictability of courses of action that depended upon their being able to do

so. Investments in advanced education and professional careers which, before the Pill, were vulnerable to waste through unwanted pregnancy, could now be made in the firm expectation that they would be brought to fruition. Goldin and Katz, in arguing along these lines, also make the point that, this being so, the Pill 'had an indirect effect on women by encouraging an increase in the age at first marriage' (2001: 15).

The laws surrounding marriage changed as the moral climate changed. Each reinforced the other. We were launched upon a path of steadily setting aside the formal rules, the conventions, and the unwritten understandings which had sustained the institution of marriage for centuries. As Dalrymple puts it, we ignored 'the human need for deep companionship throughout life, the inevitability of compromise if such companionship is to last, and the acceptance of the inherent limitations of existence that is essential to happiness' (2000:37).

Misgivings

It is likely that a great many people, perhaps a majority, would agree about the nature and extent of the changes described above. But it does not necessarily follow that they approve them or are happy about them. It may be true, as Magnet suggests, that what we have witnessed in this generation is a transformation of elite opinion and the adoption by a relatively privileged minority of a more 'liberated' lifestyle. Concurrently, and perhaps consequently, we have seen the breakdown of marriage, family life, and traditional morality among the working poor, and the enlargement of an 'underclass' characterised by chaotic family arrangements, child neglect, non-work, delinquency, crime, and drug-taking; with those concerned enabled to live such lives by extensive welfare provisions. Yet the majority of the population may still have misgivings.

There is some confirmation of public recognition of the social and moral changes described above, and concern about them, from a survey carried out in December 2000, by the Melbourne newspaper, the *Herald Sun* (Moor 2000: 25). The paper asked its readers to answer and return a questionnaire comprising a number of questions on a range

of subjects and to state their age, and other personal details. The several thousand respondents are not, of course, a random sample but a self-selected group comprising, we might conjecture from the tabloid character of the newspaper, more or less adequately educated people with an interest in social issues and in moderate socioeconomic circumstances. Their answers showed that, overall, 82 % were worried about declining morals. When broken down into age groups, 63 % of those under 24, and 90 % of those over 55, fear that 'moral values are declining'. Some 73 % believe children are having sex too early, with almost half (49 %) of those under age 24 agreeing. Two-thirds of the respondents (67 %) are worried that there are too many divorces.

At the very least, there is a widespread perception of an intimate connection between a radically changed sexual morality and the deteriorating status of marriage. The sexual revolution mocks marriage and family formation in many ways - not least by separating procreation from marriage and by extending to cohabitation and de facto relationships privileges and obligations similar in many respects to those applying to the married. As we shall see, other changes – for example, in the economy, in the expectations of women, and in family taxation – have been important in the present turbulence of marriage and family life, but it is the transformed sexual morality and the separation between sexual gratification and marriage, which has provided much of the moral and attitudinal background against which the contributions of other forces need to be seen and understood.

Chapter 3

Feminism and the Family

In many respects, the ideology of the feminist movement which arose after World War II joined seamlessly with the ideas behind the sexual revolution and reinforced them. In separating sexual gratification from marriage and the dependence on men that it was seen to imply, modern feminism, especially in its more radical forms, has been extraordinarily important in changing the relationships between men and women and the character of marriage and family life.

It need hardly be said that feminism is not a monolithic doctrine. There are many theories about the place of women and womanhood in the world, many policies for advancing a variety of aspirations, and wide disparities between women in what they believe and what they strive for. Nevertheless, from an ideological point of view, modern feminism falls into two main categories. 'Liberal' or 'equity' feminism, concerned as it is with equal opportunity for women, equal political and property rights, and with expunging the symbolic markers and the realities of unfair discrimination against women, has a long history from Aristophane's *Lysistrata*, through John Stuart Mill's *The Subjection of Women*, and Emmeline Pankhurst, to Camille Paglia. As such, it has won the allegiance of women in the West and acknowledgment of the justice of such claims by men. Skirmishes are still being fought over various issues – 'comparable worth', for example, and compensatory measures for biological differences such as average body strength that undercut equal opportunity – but, on the whole, mainstream feminism in this liberal sense is no longer controversial.

Women, Men and Gender Feminism

'Gender' feminism, on the other hand, presents a much more radical challenge. At its heart, it either denies or evades the implications of real biological differences between the sexes, their relationships to male and female behaviour and roles, and to the evolution of social and cultural institutions. Male and female behaviour, and sex roles, it is claimed, are not influenced by differing biological characteristics but are conditioned by environmental manipulation overseen by men in the interests of sustaining male domination. But If there are no male biological characteristics which influence differential behaviour vis a vis women, it is not clear why men should come to seek domination. Roles, it is claimed, are learned through social conditioning and, absent the conditioning, the roles (the 'genders') would disappear. The political agenda of gender feminism is to unmask and overturn the instruments of this presumed conditioning process which imposes injustice on women. These instruments turn out to be the dominance and privileges of men, bourgeois marriage and the traditional family, an apparatus of law, education and socialisation, and public discourse. To this feminist claim of male domination and the learned character of sex differences, Michael Levin (1992: 14) offers a dissenting rejoinder:

'Feminists treat innate sex differentiation as if its main use, or misuse, was to prove male fitness to rule. This danger is imaginary (and probably perceived to be such by feminists). Not only are there no hordes of male chauvinist neo-Nazis waiting to bar women from law school on biological grounds, biology takes no stand whatsoever on questions of value. Biology *describes* men and women, and rating men better than women because men are more aggressive, or women better than men because women are more nurturant, makes as much biological sense as judging ducks better than horses because ducks quack. Ducks quack because quacking was adaptive when ducks evolved, just as human differences have been adaptive during human evolution. Biology does not rank the sexes, and makes no commitment about the ideal number of female physicists, the proper division of household chores, and other questions agitating gender moralists. Biology *exonerates* men (and 'society') by explaining male economic success in terms of innate, uncoerced differences in ability and desires. It provides a better theory of the behaviour of the sexes than does the oppression theory, thereby undercutting the claims of inequity

supported by the oppression theory. Given innateness, women's assumption of domestic tasks and men's dominance in the workplace are the aggregate effect of the sexes' different choices. It does not reflect thwarting. No one is to blame, because nothing blame-worthy was done. No steps are needed to alleviate the condition, because it is not a condition. Women are not owed compensation for systematic wrongs done to (other) women, since there were not such wrongs."

Gender feminism's denunciation of male 'dominance' meant directing its energies towards what it saw as the male-constructed institutional repositories of illusion, privilege and injustice – marriage, child-bearing and family, and the unchallenged social habits of the existing state of affairs. Accordingly, liberation was to be achieved by transformation of the cultural norms sustaining the status quo, and, in particular, by escape from motherhood and its burdens, by severing the link between marriage and economic sustenance for a woman and her children, and by legislative and regulatory recasting of education and public discourse.

Patriarchy and Marriage

Simple observation of male and female behaviour and the accumulating knowledge of the effects of their different hormonal environments on mood, behaviour, and physical structure (including brain structure) in men and women are more than enough to convince us of the greater aggressiveness of men, their urge to achieve and prevail, and their willingness, unless constrained, to use their strength to achieve their ends. Which is not to say that women have no interest in power and control; clearly, they do, but the average differences in degree and preferred forms of expression are important. If patriarchy is defined as the over-representation of men in positions of power and achievement, and if power and achievement depend to an important extent upon a stronger drive to dominance and the climbing of hierarchies, the genetic endowments of men will, over time, yield such an over-representation. Patriarchy, in that sense, is what we should expect from the playing out of sex differences, and does not, in itself, represent an injustice in the absence of structural factors which favour males over females.

Such structural factors have existed. Only the obtuse would deny that men have tolerated wrongs upon women in such matters as the denial of property rights, access to divorce, and the right to vote. The male as 'head of the family' has only recently passed into history as a legal reality, even though its operational reality in the life of most families has always been suspect. It may be closer to the truth to speak of the domestic dominance of wives and mothers, perhaps also for reasons to do with sex differences. 'Liberal' feminist movements, aided, and sometimes led, by liberal men, have helped remove many injustices to women over the last century. The culture has changed and those changes have been accepted and implemented in large part by men convinced that doing so was the right thing to do. It is now difficult to find genuine, systemic or structural injustice to women in Western civilisation. What are claimed to be injustices, inequities, discrimination or differential exercise of power are more likely to be social and cultural inequalities reflecting the preferences and priorities of men and women grounded, ultimately, not in male brute force and injustice, but in behavioural choices reflecting biological differences.

There is no disputing that male violence towards women is a more serious problem than female violence towards men; although the incidence of minor violence between the sexes (in marriage for example) is evenly distributed (Gelles and Strauss, 1990). Serious violence is almost always an abnormal, criminal phenomenon rather than a male-female norm established by men to keep women in subjection. Yet the latter is the gender feminist position and, in its view, the quintessence of patriarchy. Christina Hoff Sommers (1994: 188) quotes Gloria Steinem:

'Patriarchy *requires* violence or the subliminal threat of violence in order to maintain itself…. The most dangerous situation for a woman is not an unknown man in the street, or even the enemy in wartime, but a husband or lover in the isolation of their own home'.

Marriage, in the gender feminism canon, is a repository of male power and a male artefact designed by men to force women to serve men and to have sex with them. For

Janet Richards (1980), for example, marriage is little more than 'a breeding territory from which other men are excluded.' How then to explain male complicity in the deconstruction of marriage and the rapid collapse of 'breeding'? Or the heavy penalties which, until 1975, were imposed on men who left their wives?. There is no thought here that men and women may naturally seek each other out and bond together.

On the question of power and achievement, a necessary presumption of gender feminism is that there are no differences between men and women in their drives for achievement and power in the world at large, but the unfair family burdens foisted upon women by men deny women the opportunities to seek satisfaction of those needs. As suggested above, there is little suggestion in the gender feminist literature that the differences between the sexes might account for the overall pattern (given a measure of overlap and many individual exceptions) of differential male and female roles. Instead, such inequalities are deemed politically-determined injustices which can only be removed by political means. So, on the assumption that women share with men the same strong urge for power and control, but have been denied the opportunities to express that urge by imprisonment in child-rearing and home production, the first and crucial step is relief for mothers from children and home in order to play a more active role in the outside world.

On this issue, as with so many others, Betty Friedan's is the most authoritative voice of gender feminism. In confirming the suggestion I made above about female domestic dominance, Friedan sees this not as evidence of female preference but as a substitute gratification and imprisonment forced upon women by denial of legitimate avenues of self-expression. After asserting that women have the same needs as men for power and control, she says (1981:92-3):

'When woman was denied access to satisfaction of those needs in society as a person in her own right, she made home and the family into a vehicle for her power and control, status, and self-realization… The family, which in a certain sense *was* woman's power base (as Phyllis Schlafly and Marabel Morgan well understand), then became her Frankenstein monster.'

Escape from the family 'monster' became the centre-piece of the gender feminist agenda, an escape which, if children were still to be born and cared for, could only be achieved if mothers entered the workforce en masse, preferably on a full-time basis; if family leave and child care were readily available; if men shared equally in the tasks of rearing and domestic maintenance; if public support for dependent wives and children were reduced; and if privileged access to promotion and public office through 'affirmative action' programs could be routinely established.

Feminism and Public Policy

The struggle to implement this feminist agenda was reflected in public policy in the 1970s and 1980s, although the degree of direct influence of gender feminists who were strongly represented in the 'social' departments of federal and state administrations is uncertain. The challenge to the status quo was substantially realised in public policy through the following developments. Escape from marriage for both men and women was made easier by no-fault divorce. Demands for state-subsidised child care were rapidly and expansively met. Concessions in the taxation system for families with children were steadily whittled away (Sullivan 1998, 2001). This, in combination with the effective definition of women's domesticity as no more than incarceration for idiots and 'parasites' (Friedan 1963), attracted or compelled more and more mothers with children into the workforce. Formerly married and ex-nuptial mothers with children received support from the state through sole parent pensions, introduced by the Whitlam government in 1973. 'Women's studies' and 'feminist legal issues' were recognised as acceptable subjects in universities and law schools. Sexual anti-discrimination laws (some justified but some unfair) and 'positive' discrimination and 'affirmative action' practices (always unfair) were introduced. The public education of children became consciously 'de-genderised' and teaching practices for girls and boys oriented to expunging any suggestion of recognising biologically-based differences in interests and behaviours between them. Christina Hoff Sommers has meticulously documented the course of the feminist-inspired upheavals in boys' education in America in these matters, and concludes (2000: 209):

'As part of this [feminist] social and moral deregulation and in the name of an egalitarian ideal, we have denied the plain facts about males and females, laying down the principle that boys and girls are the same and that such differences as we find are the result of social conditioning imposed by patriarchal male culture intent on subjugating women. We must now learn what previous generations never doubted: that boys and girls are different in ways that go far beyond the obvious biological differences'.

The distortion involved in decreeing that there are no biologically-influenced differences in behaviour between boys and girls, but simply differences due to conditioning by a 'gendered' social environment, has led to injustices to individual boys and girls, and to serious social problems through attempts to homogenise their socialising environments. For boys, in particular, the expression of their energy and aggressiveness in highly physical and often risky ways is being treated as 'bad'. In coeducational schools, boys and girls are expected to conform to a sort of unisex standard of behaviour both in and out of class because it is implicitly assumed that there is 'no reason' why they should behave differently other than an 'environmental' reason (Buckingham 2000:34-39). But once it is admitted that boys' behaviour is strongly influenced by innate hormonal and other physical characteristics, different treatment is justified and sensible. We must then think seriously about inhibiting and re-channelling boys' energies away from violence towards others and into constructive, supervised activities which will nevertheless release the energies involved. When this is no longer done in schools, and in the hundreds of thousands of families from which the natural father – the traditional curbing and disciplinary figure – is absent, the predictable result is restless, unsupervised boys running wild and damaging themselves and doing violence to others. Environments are important, but how they should be shaped in the interests of boys and girls can only be decided once we recognise that we are dealing with differing natural endowments. That folk knowledge has been swamped by an avalanche of ideologically-inspired measures introduced without evidence and based upon flawed hypotheses which have never been confirmed.

The obverse of the problem is to expect females to be able and enthusiastic warriors, policemen and fire-fighters. Or, alternatively, how to make warfare, policing and fire-fighting more easily within the capacity of females. This can be accommodated if we are prepared to pretend that charging an enemy with a machine gun, or fighting a violent criminal into submission, or carrying an unconscious person out of a burning building, is as easy for the average woman as it is for the average man. Of course it is not, and the result, if the issues are not fudged in practice, is unnecessarily to endanger both men and women and the public they serve by softening and lowering the criteria of recruitment and the methods of training. We are told by the Australian College of Sports Physicians that the average man has a 50 % advantage over the average woman in upper body strength, a 30% advantage in the lower body, and 30% greater lung capacity. These are highly significant differences which it is sheer blindness to overlook. Men in general and male soldiers, policemen and firemen are aware of them and modify their behaviour accordingly. The Israeli Army took women out of combat roles, and one of the reasons was that men's performance in war was worse when women were with them. There are, of course, many jobs in the armed forces, the police service and firefighting that should be just as readily available to women as to men because the average relevant capacities of men and women are equivalent. But where this is not the case, we may have a parody of equality of opportunity by defining real and relevant differences between men and women out of the picture.

Such developments are testimony to the success of the feminist movement in substantially changing mainstream culture to fit a world view which denies the influence of biological factors in sexual differences and human behaviour, and which refuses to accept aspects of marriage, family life, and role differentiation, as, at least in some part, responses to them. Complete preoccupation with engineering the social environment thus becomes the objective, since it is the supreme causative agent of behavioural and social differences. In this are the seeds of a monstrous tyranny, since the preferred agent of change, the only institution with the coercive power to reach to the heart of civil society in a program of manipulation and social engineering is the state. Logically, therefore, it is the state which must take over the entire care and education of children lest, according to

gender feminism, the inherently corrupt, 'patriarchal' family continues to do what it has always done – instruct its children and reproduce a culture which is destined to oppress and subjugate women.

Feminism And Motherhood

The core proposition of gender feminism is that the emancipation of women is incompatible with motherhood, understood as caring for children. By extension, a traditional family life is inherently oppressive to women. If men, and society in general, are to live with such an emancipating feminism they must change in ways which relieve women of the unfair burdens of children and family life. Mary Ann Glendon (1998; 89) quotes a conclusion from Penelope Dixon's annotated bibliography of feminist works on motherhood: ' The major works have a common thread…the institution of motherhood is the root cause of oppression of women'.

It is gender feminism's contempt for the family which best explains why there has been a 'backlash' against it by increasing numbers of women who accept the centrality of children and family as a cherished fulfilment for women, including women who also see a career as a desirable end. To them, Betty Friedan's characterisation of the housewife as a 'parasite' is the worst kind of insult and a betrayal of women's solidarity. F. Carolyn Graglia (1998: 97) believes that men were less the feminist target than women who would not subscribe to the gender feminist agenda:

'Housewives, not men, were the prey in feminism's sights when Kate Millett decreed in 1969 that the family must go. Feminists do not speak for traditional women. Men cannot know this, however, unless we tell them how we feel about them, our children, and our role in the home. Men must understand that our feelings towards them and our children are derided by feminists and have earned us their enmity.'

The Australian writer, Angela Shanahan (2001), expresses similar feelings:

'Furthermore, feminists who view work outside the home as the only sort of work worth doing are bound to be at odds with the silent group of women whose families come first; whose husbands and children are not barriers to self-fulfilment but a means to it, and for whom work is not for breaking glass ceilings but for making ends meet.'

In another publication, Graglia (1996: 30) stresses the influence of feminism in creating a climate of attitudes and public policy intended to drive women into the workforce, into sexual competition with men, and to undermine the former assurances of traditional marriage:

'The feminist goal has been to drive homemakers into the workforce to work as hard as men and thus gain equal political and economic power within an increasingly androgynous society. Indeed, every action of contemporary feminism has served this goal, which is why feminists have ardently supported the modern sexual libertinism that has encouraged women to mimic male sexual patterns. Our no-fault divorce regime that enables men to abandon and impoverish families is the most profound and enduring legacy of feminism. It may seem ironic that through its divorce policy a *women's* movement disadvantaged housewives and promoted the interests of their husbands. But it is consistent, for by subverting housewives' social and economic security, no-fault institutionalized within our society feminism's diktat that women abandon homemaking for market production. Feminist divorce policy, Betty Friedan once explained, purposely deprived women of alimony to force them to assume "equality of responsibility" '.

Just as feminism itself cannot be dealt with as a single category, neither can the views of women about feminism; there is considerable variation and ambivalence. In 1997 the Queensland Government's Office of Women's Affairs completed a comprehensive study of Queensland women involving discussions with women in 15 focus groups and a quantitative survey of 5,000 women 18 years or older. In its report of the results (1998), a section summarises the findings of the views of Queensland women about feminism. The findings were divided into four age groups, but on the question of attitudes towards feminism there was surprising agreement across the groups. A majority (56 %) expressed

'reservations about feminism in its current form, questioning its relevance, impact and image'. Nevertheless, 'liberal' or 'equity' feminism got the thumbs-up: they supported 'greater equality and independence for women…'(1998: 14).

Powerful as the influence of feminism has been in transforming both the attitudes towards and the reality of motherhood, child care and family life, it remains one factor, an important one, among several determining the present condition of marriage and family. It must be placed in context with other factors which have cooperated with it to produce a cultural and economic environment which has devalued motherhood, made jobs more attractive to mothers, and marriage uncertain. It was, after all, a Federal Parliament almost completely composed of men, not feminists, which made no-fault divorce a reality by 60 votes to 59 in a 'conscience' vote on non-party lines. The modern movement of mothers into the workforce has been of immense importance for children and family life; but it has occurred because rational women have simply responded to the incentives and difficulties they have confronted, including the greater uncertainty of marriage. As Glendon puts it (1998: 90):

'Full-time motherhood is a risky occupation. The demographic factors reveal that women have hedged their bets in two ways: by having fewer children, and by maintaining at least a foothold in the labour force even when their children are very young. But that strategy still does not protect mothers very well against the four deadly D's: divorce; disrespect for non-market work; disadvantages in the workplace for anyone who takes time out for family responsibilities; and the destitution that afflicts so many female-headed families. To make matters worse, women's work outside the home may even marginally increase the risk of divorce while hedging against its effects!'

True enough, but Graglia, too, is surely correct in arguing that feminism has played an important part in persuading or shaming a proportion of mothers into believing that they would not be doing themselves justice if they did not work. And she is right in stressing the deprivation for those women (and men) for whom present circumstances make it difficult to forge a keenly-sought domestic life and to have and care for children of their

own within a stable family. To the extent that feminism has helped create those circumstances, it has worked against the interests of a large proportion of women. There is, therefore, a real task for public policy in helping to make that fulfilment more accessible without putting barriers in the way of women who do not want to surrender their attachment to work and career.

Mothers and Work

So, there are many reasons why individual mothers with young children might seek to join the workforce and be ready to accept feminist urgings that formal or informal child care is an adequate substitute for a mother's care. Whether the main motive is money, self-fulfilment or sociability, the last 20 years have seen a very substantial increase in the proportion of mothers undertaking full-time or part-time work. As the proportion of mothers working has increased, so has the resort to forms of non-maternal child care. Child care arrangements may be highly varied and either formally given in professional creches, with or without government subsidies, or provided informally through ad hoc private and intra-familial arrangements with grandparents and others. In the context of such variability, there can be no blanket judgment about the quality and desirability or otherwise of non-parental child care arrangements. Yet, as we shall later see, the quality of care of infants and young children is an issue that bears heavily upon their well-being and subsequent development.

Over the last 25 years there have been substantial increases in the percentages of mothers of infants choosing full-time (35 hours per week or more) or near full-time work. It is a moot question whether this reflects necessity – growing pressure to earn money for the family - or changing preferences, such as a strengthening inclination to seek work for intrinsic, or social, or other reasons.

Insight into this trend of increasing workforce participation by mothers, especially by mothers of infants, is provided if we break down the under-5 age group of children and examine the changes between 1976 and 1996. Information made available to *The*

Australian newspaper by the Australian Bureau of Statistics in August, 2001, shows (Megalogenis 2001:6) how dramatically the workforce participation of mothers with children aged 2 or less increased between 1976 and 1996 (Figure 2). In the first year after their child was born, 16.5 % of mothers in the 1970s were in the workforce. In the 1980s this rose to 29.8 %, and by the 1990s the percentage had more than doubled to 35.4 %. These figures include mothers in part-time work as well as those in full-time work. If we narrow the focus to mothers working 25 hours per week or more, with children 1 to 2, the figures are 13.8 % in 1976, 17.2 % in 1986, and 22.4 % in 1996. After age 2, 50 % of mothers are back in the workforce.

Insert figure 2 (from p6. Of The Australian, 31/8/01)

It is reasonable to assume that this general upward trend has continued to the present and one infers, therefore, that at the present time the mothers of one child in four under the age of 2 are working 25 hours per week or more.

Megalogenis points out (2001:6) that this change in mothers' attitudes to working when their children are under 2 came about in two bursts – in the 1980s and in the 1990s as mothers not only resumed work sooner but more chose full-time or near full-time jobs. As we shall see in the next chapter on family taxation, these changes are correlated with steadily reducing government recognition of the costs of raising children by the taxation system.

In August, 2001, the Australian Catholic University decided to grant all of its female staff a full year's maternity leave, on partially reduced pay. The decision was criticised as opening the way for a highly expensive impost on private and public employers which would reduce overall employment and ultimately work to the disadvantage of young women. Others praised it as a family-friendly initiative likely to benefit mothers, children, and the birth-rate. In my view it is a bad initiative. As I will argue in the next chapter on family taxation, public policy should focus on the costs of raising children and the legitimate claims of children within any taxation system. The taxation system and policy generally should be neutral about a mother's decision whether or not to join the

workforce. There should be no policy incentives inducing a mother to work or stay at work if her preferences are otherwise. Commenting on the Catholic University's decision, Jennifer Sinclair (2001) adds some other, interesting dimensions to the issue and makes the following points:

- 'Paid maternity leave is not family-friendly policy run amok. In fact, it institutionalises a mother's choice not to be with her children. It ensures that a mother's absence from her child, for most of the day, will be permanent, while her absence from the workplace will only be temporary'.
- '…paid maternity leave secures the woman's identity as primarily that of employee, over and above that of mother. It also ensures ties to the employer and her work take precedence over the needs of her child'.
- 'Paid maternity leave suggests the birth of a child is a temporary interruption to the more durable bond of employee to employer'.

Granted the growth of pressures to encourage mothers into the workforce, particularly when their children are quite young, there is no single, overriding explanation for their decisions to do so. The reasons vary on an individual and group basis and change over the life-course. As Kass points out (1997: 54), modern developments have helped release wives and mothers for pursuits other than meeting domestic and child-bearing obligations:

'Technological advances in food production and distribution and a plethora of appliances – refrigerators, vacuum cleaners, washing machines, dryers, etc. – largely eliminate the burdens of housekeeping; not surprisingly, however, homemaking itself disappears with the burdens, for the unburdened housewife now finds outside fish to fry. More significantly, medical advances have virtually eliminated infant mortality and deadly childhood diseases, contributing indirectly to the reduction in family size. The combination of longer life-expectancy and effective contraception means that, for the first time in human history, the child-bearing and child-rearing years occupy only a small

fraction (one-fifth to one-fourth) of a woman's life; it is therefore less reasonable that she be solely prepared for, and satisfied by, the vocation of motherhood'.

The advances to which Kass points have obviously made it easier for housewives/mothers to join the workforce but, when necessity to earn money is put to one side, there are other powerful reasons why mothers want jobs. Arlie Hochschild's study (1997) stresses the competing attractions – social and intrinsic – of the workplace and its companionship, gossip, appreciation of a job well done, problem-solving, and cheer, in comparison with the lonely routine, uncertainties and chores of domestic work and motherhood. All of which is no more than observation and common sense would suggest.

What Do Women Want?

Nevertheless, having children does make a difference, and many women still see themselves as homemakers. We know that the majority of women, including mothers, express a preference for staying home with young children over going to work, other things being equal (Hakim 1995: 435; 1996; 2000), (Evans 1995b:2-3), (Maley 1996: 18-20); and, also, that most women (and men) express satisfaction with the traditional division of labour within the domestic sphere (Baxter 1995:13).

The Queensland Government Survey of Women (1998) mentioned earlier gives us some useful information and some confirmation of what has been said above and what common sense would suspect. Paid work is significant in the lives of women, but having a child makes a crucial difference for most women about what they see as their main role. However, life cycle changes as their children grow older make work easier to accommodate. Even so, the 'juggling act' of being both domestic mainstay and paid worker is exacting and stressful for many. The Survey found that for women with children under 5, two-thirds view their main role as mother at home, and for women with children between 5 and 12, the proportion is 50.2 per cent. This falls to 38.4 per cent for women with children 13 to 18 (1998: 76).

Another Australian survey, this time initiated by the women's magazine *Family Circle* and Murdoch Magazines (1998), telephone-surveyed a national sample of 1250 people aged 25-45 years, comprising 1,000 women and 250 men. Respondents were selected using a stratified random sample, geographically based. Women with children were asked: 'If you could have your ideal choice while being a mother, would you most prefer to be at home full-time, to be in part time paid employment, or full-time paid employment?'. Very few (7 %) would prefer to be in full-time paid employment. Most opted either for part-time work (50 %) or to be at home full-time (43 %). Cross-analysis of mothers' *current reality* with their '*ideal*', showed that about 60 % of mothers at home were living their ideal, while the balance would prefer to have some kind of paid work (mostly part-time); almost 65-70 % claimed that their ideal embraced some participation in the workforce, while around 30-35 % would prefer to be at home full-time. Although two-thirds of full-time working mothers do want to be in the workforce, only 19 % would prefer to be employed full-time. Almost one-third would ideally prefer to work only part-time (1998:38).

In the face of evidence for mothers' preference, on average, to stay home with young children or to work only part-time - with rising workforce participation as children grow older - it would seem that the increase in recent years in the proportion of mothers with young children joining the workforce and working full-time is due either to growing strength of normative pressures from feminism to work, to increasing financial pressures, to the difficulty of finding suitable part-time work and opting for full-time, to some combination of these possibilities, or to some other factor or factors. Neumark and Postlewaite have suggested (1998) that maintaining parity with their 'reference group' may be a source of financial pressures on some women to enter or remain in the workforce, even though, in absolute terms they may be relatively affluent. They found, after controlling for other factors, that married women are about 7% more likely to enter the workforce if their sisters-in-law are employed. Also, when a woman's husband's income is higher than her sister's husband's income, her sister is 16% to 25% more likely to have a job. In other words, maintaining income parity with near relatives may be an

important financial motive. Norton, writing on this subject (2001: 43), quotes H. L. Mencken's definition of a wealthy man 'as one who earns $100 a year more than his wife's sister's husband'.

If it is true that there is a 'backlash' emerging against gender feminism as Graglia and others have suggested, one would be inclined to think that it is financial pressures (for a variety of reasons), or perhaps high divorce rates and family instability, which are becoming more salient. If women feel insecure in the current marital climate, or in a de facto relationship, it would be rational to prepare for the possibility of having to depend entirely upon one's own earnings. Divorced and separated women are vulnerable to poverty, especially in old age, according to Professor Brian English of Newcastle University and, since no-fault divorce was introduced in 1976, the number of divorced women over 60 has increased from 2000 to an expected 20,000 in 10 years' time (Horin 2001:13).

For children, especially very young children, the movement of their mothers into the workforce represents a major change in a single generation. What the consequences have been for children, and are likely to be into the future, is the subject of a fair body of research and conjecture. That is a matter that cannot be properly understood except in the context of what we know about the fundamental needs of children and the place of mothers and fathers, and other adults, in meeting them - a subject discussed in the Chapter on *Mothering, Fathering and Children's Needs*.

Nor can it be understood until we can explain the reasons why many mothers are joining the workforce in the face of evidence for many mothers' preference to stay home with their children or to work less. It would seem that the increase in recent years in the proportion of mothers with young children joining the workforce and working full-time is due either to growing strength of normative pressures from feminism to work, or to increasing financial pressures, or to the difficulty of finding suitable part-time work and opting for full-time, or to some combination of these possibilities. If it is true that there is a 'backlash' emerging against gender feminism as Graglia (1996, 1998) and others have

suggested, one is inclined to think that financial pressures, or perhaps high divorce rates and family instability, are becoming more salient. These are not incompatible, of course, but, as we shall see in the later discussion of family taxation, there is a case to be made for the importance of financial pressures. On this subject the Queensland Government's Survey finding is significant: 'Among Queensland women who prefer to work in paid employment, the single most popular reason is to "earn money" ' (1998:89).

Chapter 4

Family Taxation and the Welfare State

For all parents except perhaps the very rich, meeting the costs of children has to be managed, as far as possible, within the framework of the parents' aspirations to maintain a certain way of life (including rearing and educating their children in a particular fashion) consistent with the socioeconomic group to which they belong and which has formed their expectations. If the family income does not allow this unless the mother works, then a motive is created for her to do so. If changing economic circumstances, for whatever reason, upset the prevailing equilibrium of income-matching-expectations for socioeconomic classes or large sections of the population, and if the answer to restoring equilibrium is for mothers to work, we should expect a movement in that direction which would be self-reinforcing as the members of the reference group sought to maintain their social and economic parity with other members making the move. In this equation, the level of family taxation and what the parents want to achieve for their children are crucial variables, and the more so if one large class or group is the victim of the disturbed equilibrium. If, for example, middle-class families become more heavily taxed compared to lower and upper class families and singles, we would expect them to act as best they can to re-establish disposable income relativities.

The adequacy of family income to meet way-of-life expectations in general is also a factor in the relations between spouses. Although a small-scale study by Wolcott and Hughes (1999:10) found that financial problems were the *main* cause of divorce in only 5 % of cases in Australia, survey and interview evidence indicates that money arguments and financial stress are commonly among the factors identified in conflict between spouses and the background to divorce (Burns 1984; Cleek and Pearson 1985; 1991; Parliament of the Commonwealth of Australia 1998). Survey data collected for *Australian Family Circle* magazine found that 36 % of parents identified lack of money

as the biggest family issue, and that: 'Around two-thirds of all parents see money as being the primary cause of marriage breakdown' (Andrew Brion Research, 1995).

As we shall see shortly, there is substantial evidence of a major change over the last 30-odd years in the relative incomes of families with children, especially single-income families, in the middle-income groups or income quintiles 2, 3 and 4. This has come about through the sharp decline in the real value of allowances and concessions for the costs of children of working families and loss of eligibility for such concessions through means-testing. An important cause of these developments has been the increasing pressure on government revenue of an expanding welfare state.

More or less contemporaneously with the developing influence of the revolution of the 1960s, welfare entitlements in Western nations, including Australia, expanded rapidly. The welfare bill, after adjusting for inflation, has grown (in 1987 dollar values) from $470 per head of population in 1960 to almost $2000 per head today. Increasing redistribution of incomes via taxation and welfare payments has been driven in large part by electoral special-interest politics and vote-catching rather than mounting poverty (which in fact was decreasing in absolute terms). To this trend was added the inflation and 'stagflation' of the 1970s and 1980s which accompanied successful wage demands beyond the capacity of productivity to meet them. One outcome was entrenched unemployment (which remains to this day), entailing costly welfare payments and thus higher taxation. Expansion of other welfare provision and pensions, discussed below, has meant that governments have been forced to descend the income scales to find the taxation necessary to meet it.

Changing The Rules

The major changes in the taxation system affecting the incomes of families with dependent children (especially middle-income families) occurred in two phases: between 1978-1983 when taxation deductions for families were withdrawn; and between 1983-1987 with the introduction of 'targeted' welfare, whereby recognition of the costs of

children was confined to low income families. This policy orientation continues in present-day family taxation arrangements.

In Australia, a long-standing tradition of heavy state involvement in regulation of the labour market and centralised determination of wages and working conditions had included provision for the expenses of dependants through the mandatory 'basic wage'. This was established in 1907 and was deemed that level of income necessary to meet the living needs of a man, dependent wife and three children. This system persisted until 1941 when its falling value, partly due to the effects of income taxation on average wages, was offset by the introduction of weekly 'child endowment' payments. It is important to note that child endowment was *universal and of equal value for all children, irrespective of family income*. During the 1950s and 1960s, as inflation began to bite into the value of child endowment, tax deductions for dependants served to maintain real family income (Sullivan 2001). In the late 1960s, with the introduction of minimum wages, followed in the early 1970s by the introduction of equal pay legislation, the basic wage system finally disappeared, and with its going the male breadwinner model of the family disappeared from financial policymaking.

Thereafter, in the 1970s, major changes began to affect the nature and value of state provision for the expenses of dependants. Child endowment was replaced by a universal 'family allowance' whose real value was rapidly reduced by high and continuing inflation, and family tax deductions were abolished. In the 1980s a system of additional family payments remedied this situation somewhat, but it was confined to a range of targeted payments for low-income families. Families on average wages or above had lost their family tax deductions and received only nominal family payments in exchange. Their income relativities therefore vanished as their taxes increasingly became the source of income supplementation for those on low incomes, including sole parent families whose numbers were increasing because of divorce, separation and ex-nuptial or unpartnered child-bearing. As low income became the primary criterion for state support, public recognition of the costs of children for those families earning average incomes or more faded into the background.

As Sullivan observes, during the 1980s and 1990s parents of children in low income families became eligible for a battery of payments which increasingly made them, via the Family Payments system, directly financially dependent upon the state in a fashion barely distinguishable from that of Sole Parent Pensioners and Unemployment Beneficiaries. Low income, rather than child dependants, became the criterion for receipt of Family Payments (Sullivan, 2001). Because of the targeting and tapering of this system, a family with two or three dependants with a family income equivalent to average weekly earnings was little better off after taxation than a family with the same number of dependants subsisting on unemployment benefits.

As we noted in the previous chapter, the steady reduction of public recognition in the 1980s and 1990s of the costs of raising children is associated with substantial increases in workforce participation of mothers with children under 2, and with more of these mothers choosing full-time or near full-time work. The figures suggest that this is now the case for the mothers of just on one child in four under the age of 2.

The Fate of The Single-income Family

As the welfare state expanded, five other developments exacerbated this erosion of earned family income. First, an increase in unemployment in the period between 1970 and the mid-1990s; second, an increasing generosity of old age pensions, and the trend, resulting from falling fertility, towards a population age structure with a larger proportion of people 65 or older; third, the rapid and substantial increase in the proportion of the population drawing disability pensions; fourth the rapid growth of sole parent pensioners; and fifth, federal provision of child care payments intended to make it easier for mothers of young children to enter the workforce. More recently, the Federal Budget for 2001-2002 provides for enlarged and generous tax-free thresholds for 'self-funded' retirees, but remains silent on the position of working families with dependent children.

The radical change in the taxation position of a single earner family with three children, in terms of family income protection, is revealed if we compare the relative positions of such a family and a single, unmarried earner, at various levels of earnings, shown as varying percentages of average weekly earnings, in 1960 and 1997. See figures 3a and 3b

Insert figures3a and 3b from Lucy

The Australian taxation and welfare systems, in common with those of most developed countries, have recognised, at least in part on the 'ability to pay' principle, the costs of raising children and have made various allowances and grants accordingly. For the first half of this century, public policy and the tax and welfare systems did this by treating those costs in a similar manner across various income groups. Beyond the basic wage, child endowment made equal provision in money value for all children *irrespective* of other family income, and the system of tax deductions for family dependants and expenses was also applicable at *all* family income levels.

From the beginning of the 1980s, the taxation system made very little allowance for the costs of rearing children. Those costs were recognised in welfare payments to families on incomes less than average weekly earnings, but the system of targeting meant little recognition for families earning average weekly wages or more. The principle to be inferred here is that if a family can support itself, it will receive little or no recognition through the tax and welfare systems of the costs of its children. If it cannot support itself, however, it will receive full recognition of child costs through the welfare system. In short, there are no coherent, universal principles within the taxation and welfare systems which recognise the costs and responsibilities of child-rearing or the taxation status of the child *per se*.

Figures 4a and 4b show net tax payments at various levels of earnings by a family with three children and tax payable by an earner without dependants in 1960 and 1997 – that is, when the value of welfare is taken from tax deducted.

Insert figures 4a and 4b from Lucy

Figures 4a and 4b show that, in 1960, a single-income family of dependent wife and three dependent children earning 150 % of average weekly earnings, after deductions and child allowances, paid no income tax and had a final disposable income 3 % *above* its earned income. A comparable family today, earning 150 % of average weekly earnings loses about 20 % of its earned income after taxation and family payment are taken into account. Such a family is therefore 23 % worse off compared to the 1960 family. In relative money terms, this represents an income disadvantage of $13,800.

In this situation, there is a very strong incentive for the mother in such a family to go to work to restore the family's position, relative not only to the 1960s family, but also to the comparable family today in which the mother goes to work and takes advantage of subsidies for child care. The Child Care Benefit is available for between 20 and 50 hours of child care per week, depending upon the family's income and work circumstances, and the amount of child care involved. For our family with three dependent children, the overall income benefit for family income, where the mother is working full-time and earning average weekly earnings, is substantial. After paying tax on the earned income and meeting only *part* of the costs of child care within the Child Care Benefit formula, the net benefit to family income would be roughly $25,000 per annum.

Apart from the strictly limited availability to her of subsidised 'occasional care', the stay-at-home mother in a single-earner family is clearly disadvantaged, in terms of Commonwealth financial support for her children, compared to the working mother who can access Child Care Benefit. And the stay-at-home mother's family taxes contribute to the availability of the subsidy for working mothers. There is no rationale offered for this inequity except the spurious claim that child care is a 'work-related' expense entitling one to a taxation deduction or similar assistance comparable to that given for a worker's tool-kit. But tool kits are essential for, say, mechanics or plumbers because they cannot earn their livings without one. Children are not essential accoutrements for earning a living. If that were true for working mothers it would also be true for working fathers!

The central issue in family taxation remains the unresolved problem of appropriate recognition of the unavoidable costs of rearing children. Figures 5a and 5b show that in 1997, disposable incomes of families with between one and three children and of earners with no dependants were very little different once earnings passed Average Weekly Earnings.

----------------------------**Insert Lucy's figures 5a and 5b**

 Figure 6 shows the situation following the income tax changes made by the Howard government in 2000 in association with the introduction of the Goods and Services Tax.

Insert Lucy's Graph 6

Two important objectives of those changes were to compensate for the greater impact of indirect taxation and to improve the situation of single-income families with dependent children. There were, however, other wider consequences. For example, sole parent families received greater relative benefits than single income families with children.

The National Centre for Social and Economic Modelling (NATSEM) at the University of Canberra has analysed and compared the family taxation regimes in 1996 with the situation in 2001 following the Howard government changes. In a comprehensive article commenting on this research, Bettina Arndt (2001) makes the following points:

- Every family type studied showed increases in disposable income.
- Lone parents on welfare had the greatest improvement
- An analysis of government support for children between 1982 and 1995 concluded: 'The loser during the period were children living in couple families where only one of their parents worked'.
- The Howard government changes have meant that a two-parent single-income family on Average Weekly Earnings with two children gained a 16 % increase in disposable income between 1996 and 2001 (but still lags behind a sole parent family receiving child support from the former partner).

- Childless families continue to enjoy a large financial advantage over families with children, and: 'This has been true since a shift took place away from universal assistance for families with children towards targeted support for poorer families…'
- 'Our tax and benefits system still poses a major disincentive to having children'.

The Status of the Child in the Tax and Welfare Systems

The present system is unfair to self-supporting families in that it violates the common taxation principle that an income should be taxed in proportion to the number of individuals dependent upon that income. Leaving aside any question of allowances for a dependent spouse or elderly relative, and concerning ourselves here only with children, implementing this principle would mean providing a universal allowance for dependent children in the tax system that would ensure for all children an equal, minimum level of net 'income', *irrespective of the incomes of their parents*.

Some taxation systems, such as the present Australian system, phase out such allowances as parental income rises. Problems arise when an allowance or tax credit is available for some, a welfare grant for others, and a mixture of the two for yet others. This applies presently in Australia, but these arrangements are not meshing well. The obvious path to a fairer and more rational system is to set a per capita child tax credit or allowance that is integrated through both the tax and welfare systems. To be logical, such a reform should be based upon a principled view of the taxation status of children.

The Australian taxation system implicitly endorses the principle that no citizen should be so taxed as to threaten his or her survival. One way or another, every citizen is assured retention of an income sufficient to meet basic needs. It is this principle which underlies the income 'tax threshold'. This is, at present, an untaxed amount of $6000-00 per annum which every citizen/taxpayer is entitled to irrespective of the size of his or her total income. It is a per capita subsistence principle. This principle encompasses the richer individuals in the country as fully as the poorer. For those qualifying adults without a certain minimum income or no income at all, allowances and money payments under the

welfare system ensure that they will receive a final income in cash or kind which is, in fact, well above the amount of the tax threshold.

The treatment of children is different and varies with the income of the parents. Low-income parents with dependent children, as shown earlier, receive relatively generous family allowances, variable with the age of the child, and roughly of the order of $4000-00 per annum per child. But the value of family allowances diminishes as income rises. With the exception of children who are the beneficiaries of a testamentary trust, where the $6,000 tax threshold applies, there is no per capita subsistence principle applying to children – no universal amount (such as the $6000-00 per annum for adults) – which applies to children per se.

It will be noted in **Figure 3b** above that at average weekly earnings and above, families with dependent children in 1997 were paying tax at a rising rate and level not very different from that of single earners, and this situation has changed only marginally since then. This is a trend common in many high-welfare countries, representing a movement towards equalisation of tax burdens irrespective of the number of individuals (including children) dependent upon an income. It reflects in practice, if not explicitly, the view that children are primarily consumption goods of those – the parents - who provide for them (Simons 1938). If we look again at Figure **3a** , it is noticeable that this view of children was not taken by the tax system in 1960 when the value of child endowment was universal for all children, irrespective of total family income. It is clear that provision was made for the costs of children, and that expenditure on children was regarded as an investment in human capital, with eventual benefits beyond the 'consumption' benefits of the parents as the child becomes a productive adult. Society and the taxation system itself benefit eventually. It is difficult to accept the contrary implication of the 'consumption good' view that a child's marginal value to society is negative.

But the core of the issue is not one of the value to society of a child, any more than the dignity and rights of an adult are contingent upon an adult's 'value to society'. To treat an adult, or a child, as a means to an end, whether as 'consumption good' or social

instrument of utilitarian value, is to abandon Kant's 'categorical [ethical] imperative': that we must not regard or treat people as means to an end.

Although Roman law treated children *as if* they were their parents' property, in reality children were not treated as property – that is to say, as available for whatever use their parents might wish to put them to. Certainly today we cannot treat children as expendable property, nor as instruments of our pleasure or use - as we can with consumption goods. The treatment of children by their parents is hedged about with all sorts of restrictions that are simply not applicable to normal consumption goods in our possession. These restrictions can only be understood as deriving from, and in recognition of, the *personhood* of the child – as an inalienable status acquired at the moment of birth and utterly severed henceforth from any connection with or dependency upon whatever might have been the motives of the parents in deciding to have a child, or the pleasures or pains that parenthood may subsequently bring. The state or society does not care if we do not paint our house, or fail to grease our car, or waste our money. But it does insist that we feed and care for our children. We cannot discard them if they are defective or do not fulfil our 'consumer' expectations. The state also insists that our children must receive an education, and children are not allowed to work for their parents or anybody else if this will jeopardise their education or their well-being.

The child has those rights independently of any connection to its parents, except that the parents must act as trustees in ensuring that those rights are in fact enjoyed until the child reaches maturity and is capable of acting autonomously. The child, therefore, must be understood and respected - in exactly the same way as an adult citizen - as a rights-bearing entity.

Reforming Family Taxation

It would seem to follow from this that the child should be regarded as a putative taxpaying citizen dependent for its 'income' (in kind rather than cash) upon its parents. In effect, the parents are *compelled* to share their income with the child at a level sufficient

to ensure that its basic human rights are protected. Surely that income, at subsistence level, should be free of tax? If that line of thinking were to be implemented in policy, it would entail allowing all parents, irrespective of their total income, a tax credit or deduction equivalent to whatever figure we put upon that subsistence income. For indigent parents, the state would provide a cash allowance for the child's maintenance - which, in fact, it already does. Further, since children's education is compulsory, it would be consistent to increase the child 'income' allowance (i.e. tax concession or state grant) to cover its education rather than the state itself supplying the education via taxation. The state does not provide children's food; it requires the parents to see to that from their independently acquired or state-provided incomes. Why not also for children's education?

Some writers on family taxation and concessions for children have objected to concessions on the grounds that it unfairly burdens those without children, who, in effect, are required to subsidise somebody else's child. But if one takes a life-cycle view of a taxation system with stable rules over the cycle, a universal child concession would entitle every citizen to the enjoyment of that concession and each would benefit equally. We are all children at one stage. There would be no inequity.

Recent history of the taxation of families with dependent children reveals, therefore, a steady retreat from the formerly accepted principle that the costs of rearing children should be recognised in the form of adequate tax concessions or allowances. It may or may not be significant that that erosion happened concurrently with the ascendancy of gender feminist agitation against the prevailing domestic orientations of mothers of children. Whatever the case, there are statistical – and perhaps causal - connections between declining taxation concessions for children, declining relative incomes of single-income families, growing incentives for mothers to join the workforce, and falling fertility.

If the arguments above for a principled acknowledgment of the intrinsic taxation/citizenship status of the child are persuasive, the policy implications are clear: all

children, irrespective of parental income, should be entitled to a taxation concession or cash endowment equivalent to that sum deemed to be sufficient to meet their essential subsistence and rearing needs. This may, of course, be set at a lower rate than the adult tax-free threshold, and variable for the ages and number of children in a family – in recognition that three children are not necessarily three times as expensive as one, and that a baby is less expensive than a teenager. These are questions of common sense, fairness, and detail. It is the principle of universal and equal recognition of all children that is crucial. If that principle were to be implemented in taxation policy, the wider implications for marriage and family life would be significant. This is a subject referred to again in the concluding discussions.

Intermezzo

The very considerable increase in the divorce rate in a generation is the most dramatic evidence of the decay of Western marriage, and its consequences for children will be discussed in Part II. The causes of divorce can be divided into two groups – the immediate or 'proximal' factors, and the background or 'distal' factors. Or, putting that another way, the 'micro' factors and the 'macro' factors. Generally speaking, the micro factors are the individual or idiosyncratic features of a marriage which divorcing couples usually refer to if asked why they broke up, while the macro factors are the social, economic, and cultural structures and their institutions which determine the environment within which individual action, in broad terms, is shaped.

The micro problems are familiar enough:

'Consistently cited marital problems perceived by men and women as the cause of divorce include poor communication, basic unhappiness, loss of love and incompatibility, infidelity, mental illness or emotional problems, conflict over men's and women's roles, and spouses' personality traits'. By and large, the factors that are conducive to long-lasting marriages are the opposites of those just cited, namely, good communication, mutual respect, trust and fidelity, shared values, cooperation and mutual support, and flexibility in confronting new challenges (Woolcott and Hughes 1999: 3).

To which one might add the *commitment* to a marriage which provides the underlying motivation to conduct oneself in ways which will help keep the ship afloat.

Woolcott and Hughes, in discussing such micro or personal level factors, quote studies about the way in which such factors are contextualised by the 'social institutions that structure individual experience' (1999:2). In other words, the suggestion is that the micro factors may be expressions at the immediate individual level of the effects of

more general environmental or institutional factors. Social institutions establish the broad pattern or structure of incentives and disincentives which determine individual behaviour by setting boundaries, or opening up opportunities, in the pursuit of individual interests.

Our interest in this book is not in probing the micro factors in divorce, but the structural factors. Thus, in the preceding chapters, we have been concerned with the 'the social institutions that structure individual experience'; in particular, marriage and the family, and the other institutions that affect them.

The cultural and sexual revolution that began in the 1960s, the feminist resurgence that accompanied it, the increasing scope of government activity, the growth of the welfare state, and increased taxation over the last 30 or 40 years, have all played important parts in changing the sexual, moral, and economic environment of marriage and family life. To this must be added a changed legal regime for marriage, which has played both a direct and indirect role in undermining marriage. Directly, as some evidence suggests, by removing some of the disincentives to divorce, and indirectly by more subtly de-legitimising the solemnity and status of marriage; and perhaps also, by helping to make cohabitation respectable where formerly it was not.

The comprehensive radical assault on bourgeois institutions in general, and on the 'hegemony' of the bourgeois value system, necessarily included the family as a prime target because it was the nursery of bourgeois socialisation and the continuity of bourgeois values. In detaching men from women, and both from marriage, gender feminism added to the process of institutional deconstruction affecting marriage and the family. Concurrently, the libertarian theme of sexual freedom and the elevation of individual autonomy to the apex of 'emancipation', added its impetus to the institutional attack.

As both political radicalism and sexual libertarianism began to displace the bourgeois hegemony within the schools, universities and other repositories of bourgeois education and culture, a new 'baby boomer' generation of educated young men and women, greater than ever before in numbers and more affluent, and instructed under the hegemony of those whom Norman Dennis describes as the 'social affairs intellectuals,' began to staff the instruments of public opinion-formation in the press, radio, the rapidly-expanding medium of television, in literature, the movies and drama, and in popular music and entertainment. We continue to live in a cultural and moral environment which they have adopted and endorsed and which they disseminate.

Gender feminism, as one important aspect of the cultural and sexual revolution, deserves special attention for its success in linking marriage and family life with the oppression of women and in insisting on measures that had the effect, whether intended or not, of inducing many mothers into the workforce. The increasing separation of mothers from sustained and intimate care for their infants has been a major change. The economic independence of women, occurring concurrently with the attenuation of role specialisation within marriage, together with the wider affluence of both men and women, if childless, has undercut important economic aspects of marriage so that these are no longer – or not to the same extent – the structural supports of a married way of life that they used to be. Marriage is superfluous for more now than used to be the case and the legitimation of cohabitation has made it an acceptable and less exacting substitute. If marriage is irritating and unsatisfactory, if one is unhappy within it, one no longer need put up with it. But if one likes the idea of marriage and would like to invest in it, its current uncertainties make it a risky investment.

Consequences

These changes have transformed traditional marriage and the life of the family. As the almost universally prescribed site of sexual intercourse and procreation it is in terminal decline. Sexual activity before marriage, and within relationships other than marriage,

is very much in the ascendant. Marriage as the essential condition for child legitimacy has totally disappeared as a cultural given and the growth in ex-nuptial births attracts little comment. The notion of marital 'fault' and the necessity for proving fault before a divorce can be granted has disappeared. Permanency, although still given lip-service in the words of the Family Law Act, is no longer seen as characteristic of marriage. Partly as a result of these changes and partly for other reasons, it would seem (though it is difficult to prove) that the current uncertainty of marital durability must lead to less material and emotional investment in marriage, and therefore a greater likelihood that the marriage will indeed fail. The former, almost routine, expectation of role specialisation within marriage and the gains to welfare on which it was based, is still with us but to a much lesser extent than before.

High divorce rates, the growth of the even more uncertain option of cohabitation, ex-nuptial birth, and the increasing numbers of mothers in the workforce have had profound consequences for family life and for the well-being of children. These consequences have, in turn, led to a variety of social, economic and public policy reactions; such as the growth of out-of-home child care, a mounting welfare bill for child care subsidies and pensions for sole parents, and falling national fertility.

The importance of marriage for children, and the relationship between attention to the needs of children and parental care by both mothers and fathers, are the major themes of the next chapters. This is followed by a discussion of the nature of marriage and the reforms that are needed if that essential nature is to be retained and supported by the law and public policy.

Part II: Consequences and Cures

Chapter 5

Mothering, Fathering, and Children's Needs

In the study of parental roles in child development, most attention has been paid in the recent past to the mother-child relationship within the family triad of mother, father and child. That research has demonstrated the importance of both attachment of the child to the mother and the early establishment of mother-child bonding in meeting the child's needs (Bowlby 1969, 1975, 1981; Ainsworth1973, 1978; Belsky 1994, 1999, 2001). The mother is popularly seen as the pre-eminent carer while fathers tend to be regarded as more marginal, background figures, significant primarily as part-time care-givers, providers, protectors, disciplinarians, and playmates. The 'distant' father is part of our folklore; while the father absent because of divorce or separation is now a more common reality.

Quite apart from the unique biological connection between mother and child, there are good reasons why the two parenting roles should be seen differently. Despite the increasing movement of mothers into the workforce, it is still the case that the 'contact hours' between mothers and their children are on average at least three times those between fathers and their children, and undoubtedly even more so in the case of babies (ABS, 1994:8).

Nevertheless, family patterns vary. Russell found in his study of 250 Australian two-parent families (1982:39) that in 15 % of them the fathers 'were found to participate in *all* aspects of child-rearing – nappy-changing, bathing, feeding, play, providing affection and discipline…'.But, as we shall see, the significance of fathers in their children's development is not a simple function of time spent in the child's company. The distribution of child-caring and contact time between mothers and fathers may be highly variable, depending upon the arrangements which best suit particular families.

The important thing is whether certain parenting functions are effectively carried out within the time available. We are beginning to realise, as more and more biological fathers disappear from the lives of their children, that the fathering function may not be dispensable except at great cost. Ideally, both parents have complementary roles to play in the complex saga of children's growth and development.

What is beyond argument is the infant's need for adult attentions and services without which it will not survive or thrive. Essential 'parenting' functions may, in theory, and not infrequently in practice, be performed by adults other than the natural or adoptive parents. Strangers or more distant relatives may bring to the task the love and dedication expected from the child's parents and successfully complete the child's development. But this is a more uncertain course. It is not easy to find others – especially part-time or professional carers - who will match the powerful motives of affection and fierce protectiveness that almost invariably drive biological parents in the rearing of their children, or the similar, unrequited motives of longing for children that lead to adoptive, full-time parenting. This raises the question of the relationships and differences between parental and non-parental care and successful child development; and how they serve children's needs.

By and large, the scientific findings on the developmental requirements of children conform to the intuitions and reflexes of most parents and the bulk of child-rearing lore and practices across many cultures. Above all, these requirements are that children must be fed properly and kept warm and clean; that parents, or parent-surrogates, must be alert and respond appropriately to illness, distress, and discomfort; that the child should be cuddled and communicated with; and that it must experience love and a degree of stimulation.

Love and the Brain

The three most important dimensions of successful infant development are intellectual, physical and emotional, involving the brain as well as the body, and personal as well as social relations. Benign growth in these dimensions demands the constant involvement of the adults closest to the child. Recent findings on the growth of the infant brain, for example, emphasise the extraordinary changes in the neural networks of the brain that take place in the earliest months and years of life and the close interaction between biologically or genetically-driven tendencies and the quality of the nurture the child receives in this crucial period (Shore1997; Perry 1998). Summarising this research, Nash (1997:38) comments:

'Starting shortly after birth, a baby's brain, in a display of biological exuberance, produces trillions more connections between neurons than it can possibly use' (Nash, 1997:38).

However, where children are deprived of a stimulating environment - where there is little play and where there is little physical contact and verbal interaction between the child and the adults closest to it - their brains may be 20 % to 30 % smaller than is normal for their age. In other words, 'the data underscore the importance of hands-on parenting, of finding the time to cuddle a baby, talk with a toddler and provide infants with stimulating experiences', and that by the age of three, 'a child who is neglected or abused bears marks that, if not indelible, are exceedingly difficult to erase' (Nash 1997:38-39).

But it is not only brain capacity or neural richness that is vulnerable; there may be emotional and personality deficits if the developing child lacks the right kind of care and stimulation: 'Loving care provides a baby's brain with the right kind of emotional stimulation. Neglecting a baby can produce brain-wave patterns that dampen happy feelings' (Nash 1997:41). In other words, physical development of the infant brain and the complex emotional development of the child - its feelings of joy and sadness, of distress and contentment - occur side-by-side. Both processes are powerfully mediated

by the presence of caring and involved adults who thus play an important contributory role in the evolution of personalities marked either by joy or sadness, pride or shame, and other enduring traits.

About the end of the first year of life, the brain has developed to the point where the speech centres are ready to acquire and use language. Here, too, the process of learning language depends crucially upon the interaction between the child and the parents. Parents, it seems, irrespective of their cultures, adopt a rhythmic, high-pitched speaking style, known as 'parentese', when speaking to their babies by putting their faces close to the child, using short utterances, and adopting an unusually melodious tone; the babies listen and their heart rates increase. Speaking in this way appears to hasten the process of connecting words to the objects they denote. Unless specifically instructed how and when to do so, it is doubtful whether adults other than the parents would spontaneously act in this way. And it is a moot point whether, if they were so instructed and willing, they would successfully mimic 'parentese' and draw the same response from the child.

The importance of loving, involved parents is counterpointed by the consequences of parental or adult abuse or neglect. Nash (1997:45), quoting research by Dr Bruce Perry of Baylor College of Medicine in Houston, Texas, points out that the child's neural circuitry and emotional responses may be conditioned by early abuse and emotional deprivation, concluding that: 'Experience is the chief architect of the brain', and 'because early experiences of stress form a kind of template around which later brain development is organised, the changes they create are all the more pervasive'. Perhaps the reference here to 'experience as the chief architect of the brain' is open to too wide an interpretation. There is evidence that there are sex-based, genetic differences in the architecture of the brain, and the reference here is essentially to the conditioning of emotional responses or reflexes and/or simply to failures of neural growth or neural interconnections, in both sexes.

What emerges from this research is the intimacy and subtlety of child-adult interactions in the developmental process and the crucial dependence of successful development - especially emotional and personality development - upon adult affection and adult dedication to the child's best interests. Every child is an individual with its own ways of relating and responding to its environment and close adults. While the basic needs of each child are the same, the ways in which they are satisfied may be variable. This variability, and the impulse to adapt to it constructively and sensitively, is something that parents, pre-eminently, are motivated to deliver. As Patricia Morgan puts it (1996:31):

'The stability of care-givers is important because early communication tends to be idiosyncratic, and pre-verbal children need time to develop patterns of behaviour based on mutually understood signals. Familiar care-givers know a particular individual's style of communication and can 'decode', while unfamiliar care-givers are more likely to misunderstand, or not comprehend at all'.

Mothering and Child Care

In pregnancy, parturition, and breast-feeding her child, a mother vividly experiences the physical immediacy of the biological facts of motherhood and the evolutionary imperatives of the species. The overwhelming majority of mothers is made graphically aware of the emotional and biological predispositions, established by natural selection, to nurture and stay with their young and to strive for their survival and flourishing. But that is a process which occurs in, and is conditioned by, a social setting; and no doubt always has been - as with our nearest species, the anthropoid apes. For mankind, the other main players in that social configuration are the father and close relatives, acting in the context of the tribe or village, or in the more extended, but less intimate, social arrangements of modern societies.

The most notable differences between the rearing patterns of apes and humans occur because man is predominantly a *cultural* animal and apes are minimally so. Human cultural institutions and traditions powerfully influence the habits and practices of human society, and thus the expression of whatever mothering instincts the human mother brings to the rearing of her child. Motherhood occurs in a culturally-defined world of appropriate or acceptable mothering infinitely more variable than the predominantly hard-wired programs of apes. However, mothering is but one source of personal and cultural fulfilment for women in the modern world. Accordingly, there is no clear or single path for human mothers in dealing with their young, but rather, in a society with a rich culture and many roles, a set of choices, some of which inevitably brush against the impulses that spring unbidden from the genetic inheritance of the species.

Thus, the Australian journalist, Sally Loane (1997a), tells us:

'I remember my first day back at work after having my first child........ . Most of all I remember the feeling of blind panic that washed over me like a rogue wave. I felt as though I were drowning, struggling to break the surface of the boiling water, gasping for air.

'This was not the deep, dark pit of inconsolable grief, nor the cold, naked grip of fear. This was something more visceral. Every fibre in my body wanted to rush back up the stairs and take him from his nanny, tell her it had all been a mistake and that I would not be returning to work after all. He was so tiny, just three and a half months old, and I had just weaned him. It took an effort of will like nothing I have ever experienced to get in the car and drive away.'

So Sally Loane twists painfully away from the ancient pull of child upon mother to obey the social, economic and cultural influences that have shaped her interests and desires:

'Like most of the women of my generation, I was well educated, bred to work, expected to have a career. My work had forged my identity' (1997a).

Sally Loane's panic on leaving her baby behind was the outcome of the culturally-conditioned suppression of a natural urge to stay with it. It is inconceivable that the course of human evolution could have been sustained without that natural impulse to protect the child so crucial for the survival of the species. Both the natural urge and its suppression are part of that uniquely human compound of innate tendencies and adaptive capacities shaped by our culture that distinguishes us from apes.

The Infant-Adult Bond

These, then, are the psychological and cultural shadows falling upon the current debate over child care as an institution, work as an institution, and the parental struggles to come to terms with both. Babies, however, cannot write newspaper articles describing how they feel when their mothers leave *them*. Finding out how they might feel, and how they are affected, has been one of the contributions of attachment theory. It is the normal experience of most babies to be cared for most of the time - and in the intimate, strongly attached way described earlier - by one or two major figures, usually the mother and the father, but predominantly the mother. It is also normal for others - relatives, friends, professional child-carers, baby-sitters - to relieve the mother or father for shorter or longer periods on occasions. Babies can tolerate this without undue distress. But it is the dependability of the continued presence of the key loving adults which is important. As Leach puts it (1994:85): 'All babies are physically helpless, but the babies who *feel* damagingly helpless in the longer term are the ones who cannot trust their special adults to be there and respond to them'. And later on: 'She can cope with a stranger for a while, but not with an unbroken succession of strangers. Each presents her with subtly different intonations, expressions and body language and, without reconfirmation from somebody who knows her well, she gradually loses track

of who she is. Handed from one stranger to another, a baby may even panic… .'
(1994:86).

By the end of the first year of life infants have become attached to whoever cares for
them regularly and dependably (it need not be one of the parents), and when they
undergo complete separation from these attachment figures for more than a short
period, symptoms of distress and protest may appear. As the separation continues, this
may be followed by despair and mourning as the child longs for the mother or
comparable figure. As such separations continue, evidence of *detachment* appears as the
child seems to reject the mother or other main carer who has 'abandoned' it. Separation
or inadequate care *before* the end of the first year may be even more disturbing, as
attachment research has shown. Again, Leach (1994:84) eloquently expresses what
research (Belsky 1994, 1999) confirms:

'Responsive and overtly affectionate adults are crucial to all aspects of infants'
development. Every time a baby's very existence is celebrated in another spontaneous
hug; every time her sounds, expressions and body language are noticed and answered;
every time somebody does something just because she seems to want or enjoy it, a tiny
piece is added to the foundations of that baby's future self-esteem, self-confidence and
social competence. The more of that sensitive, tuned-in experience a baby gets (and the
less of its opposite), the better'.

And further on she has this to say: 'Any personal indifference is damaging to infants,
even that of a potentially loving mother who becomes so submerged in post-natal
depression that it is all she can do to keep her baby fed and warm and clean and more
than she can do to offer herself to him, to respond to him, to glory in him. An outside
caregiver has less reason than a mother to celebrate an infant and therefore needs less
cause to be indifferent to him. A nursery worker has less reason to celebrate this infant
because she has others to care for who may overload her or whom she may prefer.
How well an infant thrives despite any of those situations probably depends on how

much time he also spends with someone who cares not just *for* him but *about* him.' (Leach,1994:84).

The 'Synchronised Dance'

It has been one of the objectives of attachment theory and research on child care and child development to try to establish the long term effects for personality development of periods of major separation or inadequate care in the years between 0-3. It is now believed that the frustration of an innate human urge to bond with a close caring figure may lead to loss of trust in others, the failure to fully enjoy social and interpersonal relationships, depression and impoverishment of the emotional life, and possibly some forms of behavioural problems.

There has also been close attention in recent years to studying the detail of interaction between mothers and their babies, and one of the findings has been the remarkable *reciprocity* which characterises it. Babies are not passive recipients of whatever attention mothers and other adults choose to give them. They are active agents in a process whose outcome is to bind mother and baby to each other in a mutually satisfying relationship which has survival value for the baby and rewards for the mother. The extreme immaturity and immobility of the human baby means that it cannot escape danger, or nourish itself, without inducing an adult to help out. How, with the limited resources at its disposal, can it contrive to ensure protection and feeding? Cook (1996:34-37), reviewing research on the subject, summarises it this way:

'Studies have shown that an (unsedated) newborn baby can see, hear and move in rhythm to his mother's voice "in the first minutes and hours of life resulting in a beautiful linking of the reactions of the two and a synchronised dance between mother and infant" (Klaus and Kennell 1976). From soon after birth babies show a preference for their own mother's voice and the smell of her milk. They prefer a human face to other shapes and can distinguish certain emotions.

'Thus a baby is innately equipped to encourage a communicating relationship, and encourage her mother to fall in love with her, or become crazy about her baby, though this does not always happen. Many fathers, too, have been surprised by how thrilled they feel when their new baby gazes into their eyes, and the excitement of caring for this real little person seizes them and they become "engrossed" '.

Cook continues (1996:34):

'[Video-recordings] have shown that a kind of micro-world of intricate behavioural communication develops as a mother and baby get to know each other. Mothers, too, appear to be innately equipped to sense these cues, and sensitive, responsive mothering is normally rewarded by a remarkable "attunement" of playful two-way synchronised interactions…. .'

Reviewing his own research and that of others on these matters, Belsky concludes (1999:50):
'Significantly, all these findings were generally consistent with Ainsworth's (1973) original theorizing linking [mother's] sensitivity and appropriately responsive care with establishment of a secure attachment to mother by infant'.

It goes without saying that infants and older children need adults to care for them, love them, educate them, and socialise them. The discussion above has given us a glimpse of the intimate connections between the well-being of children and the behaviour of the adults closest to them. To thrive, children require sensitivity, kindness, affection, attention to their emotional and intellectual needs, and self-sacrifice, from adults. They also need to be assured that they can depend upon at least one or two people who will regularly make their welfare a priority and who will regularly be on hand when they need them.

These requirements do not necessarily have to be met by the parents or parent. In principle, others can meet them given the motivation and resources to do so. But this is necessarily a long-term project which cannot be effectively accomplished in an ad hoc or episodic way. So we tend to believe that in normal circumstances the parents will be the most reliable and effective carers because they will have the strongest motivation to protect and advance their children's well-being over a long and continuous time-span. Evolutionary theory has taught us why this should be so and experience supports it.

Out-of-Home Child Care

In the discussion of child care which follows, I wish to emphasise that my primary concern is with the effects of non-parental care, for good or ill, upon children 3 years of age or less. This is the crucial early period of success or failure in bonding, in the establishment of feelings of security and emotional stability, and in the acquisition of language. This is not to say that older children may not be adversely affected by inadequate care, socialisation and supervision; clearly they may, and this can be a source of severe problems. But our emphasis is upon the care of infants, and our conclusions pertain primarily to this group.

For the purposes of the Australian Bureau of Statistics, child care, apart from parental care, refers to arrangements made for the care of children under 12. In 1999, 1.6 million children under age 12 were in informal or formal child care when not in school. Formal care is regulated care away from the child's home and includes attendance at pre-school, a child care centre, family day care and occasional care. Informal care is non-regulated and may take place in the child's home or elsewhere by family members, friends, neighbours and paid baby-sitters (Figures 7a and 7b). Between 1990 and 1999 the total proportion of children in care remained more or less constant, but there was a significant increase in the number of hours children spent in care. More children spent 10 to 29 hours, and more than 30 hours in care each week in 1999 than in 1990.

(Insert, as figures 7a and 7b, figures 3.8a and 3.8b from page 40 of State of the Nation, 2001)

In 1999, formal care of young children included 9 % of children under one year, increasing rapidly to 24 % by age one and up to 73 % at age four. This last figure indicates the widespread use of pre-school (formerly 'kindergarten') facilities by children between 3 and 5. For children aged 0-4, 29 % required care for parents' work-related reasons and 48 % for personal reasons. There are just over one million children aged 3 or under, and of these children approximately 60 %, or about 600,000, were experiencing some form of formal child care in 1999 (ABS 2000).

As more mothers with young children have found the father's income inadequate for family needs and have entered the workforce, the demand for child care has grown, along with government subsidies. The Federal Government has allocated $5.3 billion to child care over the next four years (Department of Family and Community Services 2000:1). The Federal Budget Papers for the year 2000-2001 (Budget Related Paper No. 18) show an appropriation for child care subsidies of $1.244 billion – an inflation-adjusted increase of 282 % in nine years from the sum of $375 million appropriated for 1991-1992. In addition, the State governments are heavily involved in providing and subsidising a variety of child care services. The Annual Report for 1999-2000 of the Department of Family and Community Services reveals (p. 199) that 577, 500 children are using Commonwealth-funded child care services.

Between 1987 and 1999 half of all children under five using child care increased their hours in care from 8 hours per week to 13 hours or more. This figure correlates with the increase in the hours worked by mothers between 1984 and 1998, referred to earlier. In 1999, 66 % of children used child care, of whom more than 1 in 3 used informal care only (for example, by relatives). The percentage of Australian families using child care increased from 20 % in 1996 to 23 % in 1999 (ABS, 2000).

These figures represent a significant change, in the space of a generation, from a situation where the overwhelming majority of children under 5 could expect their natural mothers or fathers to be with them almost constantly, except for occasional minding by fathers, grandparents or friends or, for those from 3 to 5, attendance at pre-school. For children over 5, as the figures on working mothers shown earlier demonstrate, mother absence at work increases with the age of children, along with demand for after-school care and decreased after-school supervision of teenagers, in particular.

Child care on this scale therefore confronts us with a significant change in our child-rearing practices. This has been applauded as progress by those who see the movement of high proportions of mothers into the workforce as delivering justice long-delayed, as psychologically and morally beneficial, as economically rewarding for individuals, families, and the overall economy, and as beneficial for children if the child care is of high quality. Others have expressed misgivings about the weakening of a long tradition of early child care by parents, and the effects on children.

There can be no sensible or fair discussion of child care that does not recognise the strength, and the legitimacy, of the desire of a great many mothers to live lives that are not restricted to caring for children and maintaining a home, who seek fulfilment in a job or profession, or more family income, or merely a few hours respite from caring for their children. Needing a job or loving it, and loving one's children too, often raises acute and painful dilemmas. Undoubtedly, working mothers want to be good parents, and this may be accomplished if satisfactory arrangements can be made for child care arrangements if their absence is frequent and extended. The crucial question is whether this can be achieved *generally* and *reliably* at reasonable cost. Ultimately, of course, child care judgements must be made by responsible parents. Informed judgements must necessarily rely to a large degree upon what research on child care tells us and upon the likely capacity of an extensive child care regime to meet the needs of children.

Research on Child Care

There is now a large body of literature describing research on the effects of out-of-home child care on children and considerable controversy over the findings and their implications. One of the obvious difficulties here is that the quality and extent of child care can vary enormously and so influence findings in one direction or the other. Another is the difficulty in controlling the variables and in measuring the effects of different regimes on very young children. Since much of the research purports to measure these effects in terms of emotional, behavioural and intellectual criteria, there can be room for considerable variation in the skill and accuracy with which consequences are assessed. Yet another variable is the nature of the home environments of children who experience extensive out-of-home child care. It seems no less than common sense that for two comparable children experiencing unsatisfactory child care, but with home environments such that their child care deficiencies are compensated for by the one and not the other, that the emotional and behavioural outcomes for the children concerned might be quite different. And, finally, the amount of time per week that a child spends in child care is important.

At one extreme, as we have seen with orphans of war in Yugoslavia, and abandoned children in Romania, severely neglected infants, and young children deprived of affectionate interaction, care and stimulation, even though adequately fed, may decline and die, or be badly scarred emotionally and psychologically. So, if children are profoundly affected in their behaviour and development by the nature of their encounters with the adults who care for them, inadequate or unsatisfactory care must have observable consequences. Indeed, this is the first hypothesis that research on child care must propose, and so behavioural, emotional and learning difficulties became a prime focus of research in this area.

Sally Loane (1997a) has reviewed the case for and against child care as it is revealed in a number of studies she describes. She even-handedly presents both the negative and positive findings, despite the fact that her own child was placed in child care at three

months. She points out that several studies offer quite disturbing results in that they show that children who undergo long periods of child care display more aggressive and uncooperative behaviour, insecure attachment, and non-compliance with adult requirements. On the other hand she quotes studies and experts who claim that the negative consequences are over-emphasised, who stress the adaptability and resilience of children, the social and educational advantages of good quality child care, and the contribution it makes to less stressed parenting, especially for disadvantaged children. She summarises the findings of an Australian study by Ochiltree and Edgar (1995) and Ochiltree's review of the research literature (1994) that 'long hours of non-parental care, which they defined as more than twenty hours a week in the first year of life, did not result in any negative social and emotional outcomes when the child started school'.

These conclusions have been criticised by child psychiatrist Peter Cook (1996). In stressing the significance of mother-child bonding and the undesirable effects of mother-infant separation for long periods, Cook provides a detailed critique of the Ochiltree review of the research literature referred to above and challenges her interpretation of the evidence she quotes and her main conclusions. He goes on to give an extended account of the consequences of insecure attachment and separation from the parents (one of the hazards of infant child care) and to show that many studies reveal that sustained infant child care is more likely to lead to this unhappy outcome and its more distant, undesirable emotional and behavioural consequences. Cook further explores the professional literature on the effects of child care and approvingly quotes child expert Penelope Leach's (1996) stress on what is positively desirable in the rearing of infants. Leach collected the views of 450 members of the World Association for Infant Psychiatry on the kind of care from birth to three and a half years they would consider best from the child's point of view, and Cook (1996: 55) quotes the outcome as reported by Leach:

'Asked for how long, if at all, they considered it 'very important' for infants to have their mothers available to them 'through most of each 24 hours', most said more than a

year (the mean is 15 months). Asked whether there is a further period during which it is "ideal" for infants to be cared for "principally by mothers", most said more than 2 years (the mean is 27 months).'

In a later publication commenting on recent research on child care, Cook notes that a meta-analysis of 101 child care studies from many countries by Violato and Russell found 'robust evidence of adverse outcomes associated with non-maternal care in the areas of children's infant-mother attachment security, their socioemotional (including increased anger, anxiety, and hostility in boys, and overdependency, anxiety and depression in girls), and in their behaviour (including hyperactivity, aggression and non-compliance). They found no support for the belief that high quality day care is an acceptable substitute for parental care' (Cook 1999: 2).

Drawing Conclusions

How is one to assess the overall thrust of what is now an immense body of research on child care and its effects on children - more particularly children under three? Even the most ardent defenders of infant care agree that there are potential dangers of considerable significance for child well-being and future development. Equally, however, the most ardent opponents agree that child care, given certain conditions, especially that it should not occupy too many hours of the week away from the mother or principal individual carer, may have some beneficial consequences for child development. As we mentioned earlier, an important variable is the quality of parental care when the child is at home. For some children with inadequate, ignorant, poor and unduly stressed or negligent parents (more frequently the case with sole parents), child care of reasonable quality may enhance the child's well-being and overall development (Saunders 2000a: 38-9).

The other variable, on which both proponents and opponents agree, is the quality of care when a child is not at home. It seems that the key variables here are the number of

hours per week the child is in care, the age of the child, and the quality of the care: 'quality' includes the physical circumstances of care (space, warmth, comfort, cleanliness, food, prompt attention for injury or illness, protection from other children when necessary), affection and stimulating interaction with the adult mother figure(s), the stability of this relationship, and adequate time each day with these figures and attention from them.

The American, Jay Belsky, is among the most experienced and distinguished researchers in the field of child care and in the analysis of research by others. In the past, he has been accused of stigmatising non-maternal child care by arguing that 24 hours of child care a week for infants under one year threatened emotional attachment to the mother. He was denounced for promoting feelings of guilt in mothers who committed their children to out-of-home child care. In an interview with Australian journalist Deborah Hope (1998), he summarised his current views on the subject as given in a keynote address to the National Association of TAFE Child Care Studies Teachers in Hobart, based upon the results of a longitudinal study of 1300 children in some form of non-maternal care during the first three years of life (Belsky, 1999). Belsky believes that:

(i)   The crucial factors in assessing the effects of child care upon a particular child are: mother's sensitivity and the quality of the relationship between mother and child; more than one child care arrangement in the first year of life; the quality of the child care; and the interaction between these factors and the amount of time spent in child care.

(ii)   Thus, 'insensitive' mothering, in combination with more than 10 hours of child care per week can weaken a child's bond with its mother and increase the risk of insecure attachment. However, where the mother is sensitive and the family circumstances are good, quality of child care and amount of time spent in child care are less important. The more time and care a child receives from its mother, the more harmonious the interaction.

(iii)   Given the positive factors identified above, there is a correlation between high quality child care and better linguistic, cognitive and social development of the child.

Asked about the national guidelines in Australia requiring a child care staffing ratio of one carer to every five babies under the age of two, Belsky is reported (Hope 1998) as saying: 'One in five for infants is nobody's definition of quality'.

More recently, Belsky, as one of the principal researchers in the largest and most comprehensive study of early child care and child development ever conducted, referred to earlier (The US National Institute of Child Health and Human Development Study of Early Childhood), and now of 10-years' standing, has reported some of its more important findings. The study, on the potential effects of child care on child development, involves more than 20 investigators and scores of staff longitudinally following more than 1,000 children born in 10 different locations around America from birth onward. Belsky (2001) summarises a wealth of data as follows:
'Although the study does not permit definitive causal conclusions to be drawn, it has been carefully designed to detect statistical associations between various features of child care – such as type, quality and quantity – and child development. It does this after taking into account a host of confounding factors, like family socioeconomic status, maternal depression, parent-child interaction patterns and infant temperament.

'Some of the recent results revealed that more time spent in any kind of nonmaternal care across the infancy, toddler and preschool years proved to be related to higher levels of aggression (e.g., gets in many fights, is bully mean) and disobedience (e.g., defiant), not just assertiveness (e.g., demands must be met immediately), as rated by child-care workers, mothers and/or teachers when children were 4-5 years of age or in kindergarten.

'This was not the first time the NICHD study had detected potentially disconcerting findings. Two years ago it was reported that more time in care was related to more problem behavior when children were two years of age and had less sensitive mothering and less harmonious mother-child interactions when children were 6, 15, 24, and 36 months of age. Two years before that, more time in care was reported to be related to an increased rate of insecure infant-mother attachment relationships when mothers evinced low levels of sensitivity.

'All this is not to say the quality and type of care do not matter to children's development. The study has for years reported that when children experience higher-quality care and more time in child care centers in particular, they perform better on tests of cognitive and language development'.

'High Quality' Child Care

One thing which is noticeable about discussion of child care is the more reflective and doubtful tone employed by educated, articulate, working women experiencing many of the dilemmas of child care in their personal lives. Thus, Sally Loane (1997b), discusses the way in which working women are subjected to the twin pressures of work and motherhood and reflects on the ambivalence, and sometimes guilt, of the working mother about the choice she has made. In reviewing Loane's book, fellow journalist Kate Legge, a working mother herself, refers (1997) to pioneering feminists who lobbied for government-funded 24-hour child care centres but who now suggest that 'women should take some time out to enjoy motherhood'. Loane concludes, however, that the answer to the working mother's dilemma is high quality child care. After acknowledging the dangers for children put into child care in the first few weeks of life, and who may spend 'as much as 12,500 hours in child care' before going to school, she says:

'It boils down, in the end, to the quality of the service. While experts will always qualify their belief that child care - even child care for five days a week from birth to school - will inflict no harm on children as long as the quality is high, they would never be so confident if the situation were otherwise. The problem is, unless we are vigilant, too much child care in this country could so easily become too much mediocre child care. It may have happened already' (Loane, 1997a: 118). Loane doesn't mention the possibility of a child, having experienced high-quality care, and presumably having thereby become deeply attached to the carer, then facing bereavement when the relationship is terminated when starting kindergarten or school.

The danger, to Loane, is a drift towards 'too much' mediocre child care of poor quality. It is important, therefore, to be clear on just what such mothers mean by 'high quality' care, the means of its delivery, and the likelihood of its being *generally* available to all working mothers who want it. It is extended child care beginning in the earliest weeks and months of life up to age 2-3 which is the main focus of concern.

'Communal Care'

The Marxist dream of communal care of infants is resurrected and discussed in an article by the former Director of the Australian Institute of Family Studies, Dr Harry McGurk (1997). He prefaces his discussion of high quality child care by recapitulating the conclusions of research into child-parent attachment and interaction in terms similar to those used above:

'Let me summarise the story of parenting so far by saying that sensitive, contingent, joint interactive care-taking experiences during infancy and early childhood not only provide for their physical wellbeing but afford infants and young children with the experience of their behaviour having reliable consequences upon the world around them. They afford the experience of being effective. Such experience of effectiveness in the context of early social interaction serves as the basis for attachments between

infants, young children and their caretakers, thereby securing continuity in the experience of effectiveness, facilitating the emergence of motivation for competence and the development of subsequent competence in social, emotional and communicative domains' (1997:14). He continues, '...the fulfilling of these [parental] functions can be socially distributed and parenting can be shared' (1997:15).

In arguing for movement toward 'socially distributed parenting' as the 'modal form', McGurk declares his own belief that if this should happen, such a system would owe a duty to the children concerned that it will not sell them short. To be acceptable it must provide for them a quality of care and an emotional environment equivalent to that delivered by competent and loving natural or adoptive parents. He makes this plain:

'What I want to argue is that child care needs to be seen as a form of shared or socially distributed parenting... .' And ...'One implication is that child care cannot be simply a child minding or baby-sitting service, one that does no more than "look after" children while parents are absent. Construed as distributed parenting, good child care performs some of the same functions as parents themselves - in particular, the creation of the earlier mentioned environments of love and security, of a kind that facilitate the emergence of the bonds of trust between child and carer that become, in turn, the foundation for the development of children's physical, social, emotional and intellectual competence and wellbeing' (1997:15).

The critical question is whether it is realistic to believe that attachment and loving care of the standard that McGurk stipulates, and reproduction of that sensitivity of response to each other's behaviour so distinctive of the mother-child relationship, can be regularly, reliably and widely delivered by strangers, at reasonable cost, under a government-subsidised, formal child care regime. What is being contemplated is the surrender of infants for child care placement in the early weeks or months of life for a large part of their waking hours for five days a week; and in the hands of carers who will have no kin or long-term social relationship to them other than a professional

nexus. Whether such commercialisation and professionalisation of communal or 'distributed parenting' can accommodate the requirements of 'love, security, and bonds of trust' that are the foundations of children's development is the problem. The answer to that problem, according to Sally Loane and Dr McGurk, are child care centres of excellence, and trained professional carers producing 'high quality' child care that will routinely meet these requirements and mimic the contribution of parents.

The Uncertain Delivery of Quality Care

If that is to happen, it will necessarily mean a radical transformation of the bulk of present child care arrangements and a huge increase in costs.

From the research evidence summarised above, the criteria of high quality care ('shared or distributed parenting') equivalent to that given by normal, loving, competent, and conscientious parents, are that it should:

(i)   adequately meet infants' physical needs;

(ii)   be highly responsive, overtly affectionate, and constantly interactive and stimulatory, especially in developing verbal skills;

(iii)   be stable, dependable, familiar, and trust-engendering.

As McGurk suggests, these requirements go beyond 'minding' children or simply 'looking after' them. If a large proportion of infants are to look forward to a future where most of their waking hours will be spent in a child-care facility, their benign development demands that the more exacting conditions for achieving it be reliably and regularly met.

It is immediately obvious that the necessary requirements entail more than knowledge of routine procedures for looking after the physical needs of children and skills in keeping them amused and occupied (and there is limited scope for the latter with young babies). What is required is an emotional commitment of a consistent and durable kind that is beyond professional training and which can only spring from a kind of motivation that is simply found, rather than produced by training, and whose presence in an individual is difficult to identify before the events that might bring it to the fore. There are such people, and it may be that many of them will inevitably gravitate to child caring careers. But it may be unduly optimistic to expect that they will routinely be found in the body of child care professionals in the numbers that will be needed. The more likely hazard is not abuse or neglect (though press stories suggest that that they may be more frequent than suspected), or lack of basic kindness, but impersonality; routine rather than emotionally-engaged responses; and a certain kind of patient, 'dullness' of interaction, rather than the intensity and joy in the child conveyed by the natural parents. There is therefore likely to be a shortage, in a society moving towards 'distributed' parenting as the modal form of parenting, of carers emotionally and motivationally equipped to bring to the job what infants need.

 The next problem is the stability and dependability of their performance. Children can tolerate a certain amount of variety in their carers, provided the emotional and motivational requirements are met. But there are limits. Penelope Leach observes (1994:88): 'That vital continuous one-to-one attention can rarely be achieved in group care, however excellent the facility may be. Babies in their first year need one primary adult each, and while that may be inconvenient, it is not very surprising'. Familiarity and consistency are important conditions for establishing trust between infant and adult, and a succession of unfamiliar carers is a clear hazard, so that child care establishments with high turnovers of staff are contrary to the infants' best interests. Leach further remarks on this point (1994:89): 'It is not uncommon for a group of children to have three "mother figures" in a year. If each baby is not fully attached, she will spend many days in limbo; if she is fully attached, she will spend many days in grief'.

Stable Care and Staff Ratios

Stability of care is therefore a critical issue, and child caring as a paid occupation is marked, in the main, by relatively high levels of turnover. Adele Horin (1995) quotes Macquarie University child development lecturer Fay Pettit's observation of 'high turnover' in New South Wales child care establishments. Penelope Leach (1994:89) quotes a figure of 42 per cent as the annual turnover rate of American nursery workers. Since the advocates of high quality care increasingly look towards establishing child care as a professional career based upon tertiary qualifications, and since the candidates for such careers will be overwhelmingly young women likely to be interested in children and likely to want children of their own before too long, it looks as though child care will be an occupation inevitably exposed to high turnover rates.

Reinforcing that tendency are the relatively poor pay and career prospects of child carers and the stress of operating in centres with high children-to-staff ratios. Higher salaries and reduced children-to-staff ratios are among the obvious remedies, but they would be fiercely costly, and to implement them would take the costs of child care beyond the reach of all but affluent families or entail a massively increased tax burden for the population as a whole, much of which would have to be borne by low to middle income families.

Yet if child care is to be of high quality in order to protect the interests of the children themselves, then low children-to-staff ratios are absolutely essential, particularly for infants. Officially-stipulated staff to children ratios vary from state to state, ranging from 1:3 in Tasmania to 1:5 in New South Wales, but there is general agreement among the experts that anything above 1:3 for infants is undesirable. Horin (1995) reports the owner-director of a Sydney private child care centre as saying that 'A ratio less than 1:5 would be enormously expensive'. If future salaries are to match enhanced

professional qualifications, then the costs must move further upwards by an appreciable margin.

An unanswered question is whether even a ratio of one staff member to three children under two - and given the unlikely condition of stability of staff - would meet the developmental requirements of infants that we have earlier established as desirable. Very few natural mothers have to cope with two children under two, let alone three children, yet the evidence is that most natural mothers at least have the advantage of bringing to the rearing task an appropriate set of dispositions and motives difficult for strangers to match – together with some help from the father and grandparents. To this must be added the irony of expecting professional child carers to accept with equanimity a burden of child care which, it is said, is more than should be expected of mothers in search of a self-fulfilment which is incompatible with caring for her own children.

Accreditation and Performance Monitoring

Over the last five or six years, as the demand for child care and the size of the industry responding to that demand have increased, the federal and state governments have become active in regulating the industry and establishing criteria for the licensing and accreditation of centres offering long day care, family day care, and outside school hours care, etc. Licensing professional child care centres is a state government responsibility and the state governments offer various kinds of support for families using child care. The federal government, in addition to being the major source of subsidies for child care, has paid particular attention to establishing a national accreditation system for long day care centres, and in linking accreditation to observation of minimum standards, improving child care quality, and eligibility for Commonwealth subsidies.

The questions that need to be addressed are whether licensing and accreditation requirements are likely to make worthwhile and cost-effective contributions to high quality child care. The National Child Care Accreditation Council has been nothing if not thorough. There is no conceivable aspect of child-adult relations in the context of child care which is not addressed by the 51 Principles, and their sub-clause elaborations, running to 107 pages of detail, in the Council's *Quality Improvement and Accreditation System Handbook*. It is a tribute to bureaucratic dedication in the service of an accreditation system whose objectives are to lay down standards and principles of high quality care. The key question, however, is the effective implementation of the principles in daily practice.

Many of the critical requirements for acceptable care are both exacting and difficult to objectify. 'Attention to physical needs', including adequate space, facilities, group size, nutrition, and cleanliness perhaps present few difficulties. But how, for example, are appropriate levels of 'verbal stimulation and interaction', 'responsiveness', and 'overt affection', etc., to be defined objectively and monitored? Remember that our focus here is primarily on the interactions of adults with pre-verbal or incipiently verbal infants and, above all, on emotional transactions demanding difficult-to-measure qualities, such as 'warmth', 'kindness', etc. One of the markers of 'good quality' care in the Handbook is 'Staff greet each child with affection and pleasure...'. Another is 'staff consistently demonstrate sensitivity to a wide variety of backgrounds and family structures' (but how is 'sensitivity' to be defined?). And so on and so on in immense detail.

A major purpose in attempting to define and objectify the variables involved in quality child care is to give substance to the accreditation process and to enable evaluations to be made about whether a given facility is meeting the required standards. But if many of the critical variables cannot be effectively objectified, then the accreditation process loses much of its point because the variables cannot be effectively pinned down or monitored. How, for example, might an inspector judge, on an annual inspection on a

particular day, that 'warmth of interaction' or 'affectionate responsiveness' is a regular and dependable feature of staff-infant interactions? The judgment would be essentially subjective, and hence fallible, and in any case there would be absolutely no guarantee that whatever was observed on one day would be present the next.

As Hogbin points out in discussing these problems: 'Moreover, because evaluations will be subjective it will be impossible to ensure that accreditation is impartial. Since accreditation decisions may be important determinants of the market value of people's skills and property, this is also an important defect. A related consequence is that the subjectivity of accreditation decisions will create scope for corrupt behaviour both by reviewers and candidates for accreditation' (1992: 4). He goes on to make the further point that since the criteria or principles intended to govern quality standards cannot be enforced, parents may easily be misled, and lulled into accepting accreditation as a guarantee of standards of care which might in fact be absent or non-enforceable. Compulsory accreditation and licensing therefore introduce a considerable degree of regulation into child care, and additional expense, for highly doubtful benefits - probably no benefit that could not be more easily achieved by voluntary accreditation, or by vigilant parents with strong motives to seek out and identify those unquantifiable but vital criteria of good care.

In summary, what seems to be clear is that to demand child care for infants which is equivalent to normal parenting - which is what we must take 'distributed' or 'shared' parenting to mean - is to set exacting standards; but standards no less than are the due of every infant. Meeting such standards on a mass scale has a number of requirements and raises a variety of problems:

(i)   It presupposes a corpus of child care professionals who will bring to their task an emotional and motivational commitment that will reliably meet the emotional, intellectual, and interpersonal needs of infants we have described earlier. These are

essentially personality requirements that are, in the main, beyond training, difficult to identify in advance, and not likely to be routinely to hand.

(ii) It requires stability and dependability of performance that avoids placing infants in the uncertain position of having to establish many serial attachments and losing them. Yet the reality of child care is that it is an occupation with high turnover rates which, for formidable structural reasons, appear to be largely unavoidable.

(iii) Even assuming the 'right' carers can be found, looking after infants is a stressful task difficult to accomplish in the best circumstances, but almost impossible where staff-infant ratios exceed 1:3. However, even to attain that relatively low ratio would entail very considerable expense, raising the costs of infant care to the point where it would either be beyond the reach of all but affluent families or entail a large extra tax burden falling mainly on low and middle income families.

Conclusion

Does this discussion lead to the conclusion that 'high quality', affordable child care on a mass scale, meeting the McGurk requirements, is unattainable? It would seem so, but that is a judgement which must ultimately be left to individual families to make on their assessments of the evidence and arguments, and their own needs and circumstances. The discussion above suggests a variety of reasons for reaching a sceptical conclusion. It is inconceivable that a formal system of mass child care (which in the present context is better described as 'infant care'), which envisages placing a majority of children 0-3 in long day care for, say, not less than 5-9 hours per day, five days a week for over 40 weeks per year, could ever truly be considered as 'substitute' or 'distributed parenting'. To seriously suggest that such a system could mimic, regularly and reliably, the emotions and motivation of conscientious, natural or adoptive parents, or close relatives, in caring for infants, is not believable. The best that could be hoped for from such a system is ordinary kindness, intermittent affection, conscientious and trained

care of physical needs, and perhaps some attention to the intellectual and verbal requirements of infants. This does not begin to approximate the standards necessary to move care beyond kindly and efficient minding. But even this lower level of care in a centre would be of doubtful reliability. There would be turnover of carers, perhaps days, or even weeks, when the centre was not well run, emergency staff shortages, and times when even the best carers failed to identify a miserable or depressed child and react appropriately. The simple, unavoidable fact is that in normal circumstances a child's own parents are its best carers and anything else is second best.

Children, of course, are capable of surviving a variety of hazards, often without any evidence of permanent damage. In a study by Elizabeth Harvey of 6000 children who had experienced out-of-home child care (*Washington Times* 1999), those children who had displayed a variety of problems at ages 3 and 4 appeared, by the age of 12, to have suffered no permanent damage because of the mother's absence. The earlier problems of lower language development and academic achievement had apparently been largely, but not completely, resolved as the children grew older.

Children may cope with a degree of disruption, anxiety and neglect and recover from it. For all sorts of reasons, child care or infant care is often unavoidable for shorter or longer periods, and in many cases may be beneficial. Whether this is a sufficient reason for ignoring some children's disadvantage or unhappiness during child care, or as a temporary result of it, is another matter. One's broken leg may mend eventually, but one would certainly have preferred to have avoided it in the first place.

There is reasonable cause for concern, however, in contemplating a deliberate national policy of mass, long day care for infants in general for many hours a week for months and years in child care centres. This would be a quantum leap and qualitatively different, greatly raising the risks of developmental deficiencies for the infants concerned. To conceal the risk from parents, or to play it down for fear of upsetting them, does not serve their long-term interests or the interests of their children. Family

freedom to choose must be the bottom line in this as in other family matters where extreme harm is not proven. The whole point of the argument developed here is that, despite the occasional neglectful parent, parents in general have stronger and more dependable motives to judge the best interests of their children, and it is they who must decide how much or how little, and what kind of infant care, is appropriate for their children and their circumstances. But public policies, such as child care subsidies which are conditional upon a mother joining the workforce, which therefore reward some parents and effectively impose tax penalties upon non-working mothers, and which may therefore create incentives for parents to choose child care against their wishes and better judgement, are to be avoided.

Fathers and Child Development

Only relatively recently has the father-child relationship become a focus of rigorous research into its significance in child development and socialisation. What is emerging is the importance of good fathering in reinforcing and complementing the mother's role in ways which not only contribute to successful child development but which also strengthen and enrich the bonds between husband and wife. The absence of effective fatherhood not only deprives the child of something that it needs, it makes the task of mothering more difficult than it would otherwise be. This is not to say that a lone mother (or a lone father) may not successfully complete the parenting task. In the main, however, few child psychologists would disagree with the proposition that the well-being of children - understood in the widest sense to include their physical and mental health, education, happiness and emotional stability, intellectual growth and socialisation - are best promoted by a parenting process that comprises competent and sensitive inputs by both parents and a strong and cooperative relationship between them.

As David Blankenhorn observes (1995:13), the movement from a rural, home-centred economy to an industrial economy over the last two centuries has driven the father's

activities as provider from a domestic locus to a more distant, separated one. The physical absence of the working father from the immediate area of the household for most of the day has attenuated his domestic presence and reduced his opportunities for closer involvement in the day-to-day care, instruction and supervision of his children. His commanding and authoritative presence, his 'patriarchy', has declined and with it his influence with his children. The vacuum has been partly filled by the mother, by increased 'matriarchy', but increasingly also by school, the tribal moralities of peer groups, and the easy intrusiveness, via media and entertainment, of the world outside the home and its leading figures - its 'role models'. 'In sum', Blankenhorn concludes, 'over the past two hundred years, fatherhood has lost, in full or in part, each of its four traditional roles: irreplaceable caregiver, moral educator, head of family, and family breadwinner' (1995: 16).

One might prefer to say that these roles have been diminished rather than 'lost', but it does suggest that fatherhood is a social and cultural artefact to an extent not so true of motherhood, which remains more closely tied to the deeper and more extended biological imperatives and attachments arising from gestation, birthing, and (usually) nursing and sustained nurture. The greater cultural vulnerability of fatherhood and the relative ease with which it may be abandoned nowadays has brought a number of consequences for children which we will shortly examine. This is not to say, however, that motherhood has been unaffected by cultural and social change. As we have seen, its indispensability, too, is increasingly under challenge from movements, such as out-of-home child care and the influx of mothers into the workforce, that offer substitutes for domesticity and the care of infants. Parenting, in short, is no longer a task whose cultural definition assigns relatively clear and invariable roles to mothers and fathers. Both are now more fluid, to a degree indeterminate, and, with the widespread acceptance of ex-nuptial motherhood and quick divorce, more easily shed. However, where children are now reared apart from one of the natural parents, in nine cases out of ten it is the natural father, not the natural mother, who is absent.

Fathering: An Overview

Eric Fombonne (1995:583), quoting research by Petersen et al, observes 'that maintaining closeness with the parents, especially with the father, tends to protect adolescents from periods of negative mood'. This raises the general question: What do children get from fathers when they are present, and what do they lose when they are absent?

Sara McLanahan (1999b) and her coworkers have been involved for several years in analysing several large, nationally representative American surveys on children's family structure and their educational and social adjustment in young adulthood. What follows is a summary of her report of findings in relation to fatherhood, with special reference to father absence:

* '...a substantially higher proportion of children from father-absent households drop out of school than children from father-present families.'   And 'growing up with just one biological parent approximately doubles the risk of dropping out'
* 'father absence affects girls' educational achievement as much as boys' '.
* 'As we did our analysis of dropout rates, we controlled for test scores to make sure that the lower success rate of young men from one-parent homes was not due to inferior innate ability. Our analysis indicated that it clearly was not.'
* Dropout rates for children born to never-married mothers were higher than for children who had lost a father through death: 'Significantly, the risk for children who lost a parent to death is 15 per cent, virtually the same as that for children from intact homes'.
* McLanahan sums up: 'To summarise briefly, we find that children who grow up apart from their biological fathers do less well, on average, than children who grow up with both natural parents'.

In a study of the importance of fathers who maintain involvement with their children's lives even if they live apart, Black and her co-workers found (Black et al.,1999), for a group of 175 three-year old children, that: 'Children whose fathers play an active role in their lives develop better language skills and have fewer behavioral problems, even when their fathers do not live at home,…'.

On this subject as a whole, Henry Biller (1993), gives us a good summary. Biller, has spent the last 30 years researching father-child relationships and has brought together the findings of his own research and that of others in a book, *Fathers and Families: Paternal Factors in Child Development*, which comprehensively examines virtually every important aspect of those relationships. Fathering, Biller proposes, must be seen in the context of the parenting triad:

'Both the father's and the mother's individual development and the quality of their relationship with one another need to be considered in understanding the parenting process. Immense cultural variations occur, but the father-mother-child connection is the foundation for the family, each member benefiting and learning from the other. A tendency toward strong attachment to the infant is not just the preserve of the mother. The father, too, possesses a strong predisposition for nurturing his child' (Biller, 1993: 1-2).

Biller goes on to stress the synergistic effects, for good parenting, of husbandly emotional support for the mother and 'the likelihood that the father will constructively share parenting responsibilities and develop a close relationship with his child'. When established, this closeness 'can be especially important in fostering the child's sense of self-esteem and confidence' (1993: 3). Conversely:

'Paternal deprivation is often associated with personal insecurity and poor self-concept.….' . 'In our society, young children who do not have a close relationship with their biological fathers are unlikely to receive consistent attention from any other male

adult'. And: 'Although the styles and the specifics of the relationships are likely to differ, children can be just as emotionally connected and bonded with their father as with their mother' (1993: 3). Elaborating the latter point, Biller goes on: 'Although the mother is the first attachment figure for the baby, many infants react just as much to their father, cooing and smiling and becoming excited at his approach. Some infants become attached primarily to their fathers and thrive at least as well in their development as do infants with initial maternal attachments' (1993: 11).

 Mothering and fathering, from the child development research evidence, exhibit both interchangeability and complementarity. The child may become deeply attached and bonded to either or both, and both mother and father have a predisposition to attachment to their child; especially so for fathers if they become closely involved with the child soon after birth. According to Biller: 'In fact, men have always been capable of directly nurturing babies, and there is no reason that infants cannot attach themselves initially to their fathers as well as their mothers. Traditionally men have been expected to limit their expression of caring towards children and to show their concern primarily by being economically responsible for their families. However, a great deal of research has accumulated during the past twenty-five years underscoring the important and special roles that fathers as well as mothers can have in infant and child development' (1993: 12). As for the differences and complementarities, 'fathers tend to be more physically active with them than mothers are, playing more vigorously', and 'infants with involved fathers formed strong paternal attachments and were usually at a developmental advantage compared to those who had close relationships only with their mothers' (1993: 13). In general: 'Infants who have two positively involved parents tend to be more curious and eager to explore than those who do not have a close relationship with their fathers' (1993: 15). And further (Biller, 1993):

* Infant competence is correlated with the degree to which five-and six-month old babies were involved with their fathers and frequent interaction with fathers is associated with more advanced functioning for sons (p.16)

* Both mothers and fathers powerfully influence moral development, but studies have found that boys with a strong identification with their fathers score higher on measures of internal moral judgment, moral values and conformity to rules than those with weak feelings of paternal similarity (p.87).

* Boys' intelligence test scores are positively related to their father's nurturance (p.99).

* Degree of fathers' involvement, after controlling for boys' intelligence, is strongly related to academic performance, and, in general, fathers typically have a more direct impact on boys' than on girls' intellectual development (p.99).

* Children who became father-absent before the age of five, and particularly before the age of two, generally scored significantly lower on measures of intelligence and achievement than those from two-parent homes. The strongest results were for father absence due to divorce, desertion or separation rather than death (p.100). High father-present boys perform better at school - about one year above their expected age level on achievement tests (p.115).

Biller concludes his summary of the research evidence:

'Paternal deprivation tends to be associated with deficits in personal adjustment as well as with lessened competence in academic, emotional and social functioning' (1993: 249).

Chapter 6

The Fragile Family and Its Children

To understand the crucial role of parents and other responsible custodians in ensuring the effective care and flourishing of young children is to realise that dysfunctional performance of that role presents a threat to their well-being. Anything which prevents or prematurely interrupts the development of attachment between a child and its responsible carers – usually the natural parents – or which ends an established attachment, may lead to a child being placed in situation which represents a danger to the child's subsequent emotional and intellectual development. Children born into a natural two-parent family therefore have a vital stake in the durability of the relationship between its parents. Formal marriage of the parents has been in the past, and remains in the present, the best guarantee of its continuity; but that is much more uncertain nowadays.

When married couples divorce or de facto partnerships end, the children involved are most likely to find themselves living with a sole parent – either the mother or the father. A divorced or separated parent may remarry or form another de facto liaison, in which case the child or children will find themselves living with one natural parent and an unrelated step or de facto parent. In some cases the outcome will be to join a blended family of step parent and the step parent's children by another marriage or de facto relationship.

Thus, at the present time, 28 % of children aged 0-17 are living apart from one of their natural parents in a step, blended or one parent family (ABS, 1999) In terms of numbers this represents over one million children between the ages of 0-17. For the overwhelming majority of them (approximately 90%) it is the natural father who is absent. In Australia, about 50,000 children each year are affected by divorce.

What effects do these various family circumstances have upon children and their future well-being? How do they cope with divorce? How do they fare in sole parent and step-parent or blended households, or in a situation where a mother is living in a de facto relationship with a man who is not the child's natural father? Such questions have prompted an immense amount of research as the rate of breakdown of traditional families gathered pace from the 1960s to the present. Since divorce is the most common cause of separation of a child from one of its parents, the post-divorce well-being of children has been an intensively researched subject.

As a variety of studies began to show disturbing outcomes of divorce for children, some researchers began to ask if the negatives were being overemphasised and the capacity of children to cope with divorce and make readjustments overlooked. Some studies have suggested that divorce may have positive results for children who are caught in violent or hostile conflicts between parents; or where a parent is unacceptably punitive or abusive. Elliott and Richards (1991) have proposed, on the basis of research, that post-divorce problems of children may not be due to the divorce, per se, but to a difficult family situation preceding the divorce, especially parental conflict. Thomas Hanson (1999) has explored this hypothesis using data from the United States National Survey of Families and Households. His purpose was to examine whether parental conflict prior to divorce could explain why children with divorced parents exhibit more academic and adjustment problems than children with parents who stay together, or whether the fact of divorce itself (change in family structure), had independent effects. The study showed:

'Overall, the results indicate that both family process (conflict) and family structure (divorce) had independent negative effects on child well-being' (1999:1311).

An Australian study by Kathleen Funder for the Australian Institute of Family Studies (1996) concluded, on the evidence of a relatively small sample, that after divorce most children eventually adjusted to their changed circumstances 'without signs of serious malfunctioning'. This has a ring of truth about it since it seems hardly possible that a significant proportion of children is so crippled by divorce that the rest of their lives is

blighted. 'Serious malfunctioning' is a severe test. It is plausible to conjecture that the post-divorce adjustment process is at least an emotionally painful one for most children, the severity of which perhaps varies with age. The fact that most human beings recover eventually from most traumas is not a reason for neglecting to avoid them as far as possible. Nor does the absence of 'serious malfunctioning' exclude the possibility of significant and sometimes lasting effects in terms of behavioural problems and reduced achievement. As Hanson comments in the article quoted above (1999: 1): 'Studies have shown that children of divorced parents are disadvantaged in a variety of ways as compared to children who grow up with both parents'… . 'The results are surprisingly consistent for children from different class backgrounds and different race and ethnic groups. They also persist regardless of whether the custodial parent remarries after the divorce'.

To date, the debate about the consequences of divorce for children is largely a debate about the interpretation of the results of a great variety of studies attempting to control, as far as possible, the many variables involved in assessing post and pre-divorce circumstances. Nevertheless, over the last 20 years as a body of research dealing with large samples and adequate controls began to accumulate, the balance has tipped towards a broadly unhappy picture of the well-being of children separated from natural families that were not highly conflictual, not neglectful, and not punitive or abusive.

Children of Divorce

In the Western world, especially in Scandinavia and the English-speaking countries, the cultural *zeitgeist* emerging from the revolution of the 1960s has followed a remarkably similar pattern. The cultural similarities of the countries concerned make it plausible that well-based findings about its effects on families and children in one country will apply to others.

Wallerstein and Kelly (1980), Wallerstein and Blakeslee (1989), and Wallerstein and Blakeslee (2000) have reported findings of a twenty-year, still-continuing study, from a

group of 60 middle-class Californian families and their children following divorce. The research was based primarily on intensive interviews ranging over a variety of post-divorce developments and reactions. The study and its continuing reports have been justifiably criticised on the ground that a matching control group of non-divorced families was not involved. Its strength, however, consists in the depth and probing involved. Later, better controlled, large-scale studies, discussed below, have, in the main, confirmed the overall drift of Wallerstein's conclusions. These are that immediately after divorce children experience a variety of strong and unpleasant emotions comprising fear, sadness, a sense of rejection, worry about the future, anger, and a conflict of loyalties. For many children, these feelings may last for years. It seems that young children (say, 6 or less) may suffer the most; especially when divorce happens suddenly and inexplicably, out of a clear blue sky, at an age when such children need most care but when their parents may themselves be distracted and emotionally preoccupied.

In a survey of 20,000 American adolescents, Acock and his colleagues (1989) reported that, after controlling for socioeconomic status, children of divorce fared worse than their peers from intact families in such things as degree of satisfaction, friendship, sense of control, happiness, and trust.

In a study by researchers from the Australian National University (Evans, et al., 1995a) it was found that divorce has a detrimental effect on Australian children's education, with the causes being attributable to loss of parental encouragement, emotional support and guidance, and accompanying behavioural problems. Jonsson and Gahler (1997) carried out an analysis with a large Swedish data set comparing educational performance of children from intact families and children from families which had experienced dissolution upon divorce. They found, after controlling for economic deprivation, downward mobility and parental education, that following parental divorce there was a net detrimental effect on educational performance attributable to divorce and reconstitution.

The cumulative picture from dozens of studies reveals a range of divorce outcomes for children that include effects on health, family life, propensity as adults to divorce or separate, educational performance, occupational status, unsatisfactory relationships, sadness and depression, suicidal behaviour, delinquency, criminality, and bed-wetting (McAlister, 1995; Richards and Dyson, 1982; Butling and Golding, 1986; Sampson, 1992; Frost and Pakiz, 1990; Rickel and Langer, 1985; Farrington, 1990; Amato and Booth, 1997).

The intergenerational effects of divorce are one of its saddest aspects. It seems that children whose parents have divorced carry with them into adult life a deep scepticism about the prospects of establishing durable and satisfactory relationships with a partner. They tend to display low tolerance for dissatisfaction and relatively mild disagreements are seen as the end of the affair. In short, they anticipate break down and hasten its reality.

In a review of the research literature dealing with the effects of divorce on children, the Commonwealth Parliament's report *To have and to hold* quotes several studies (Parliament of the Commonwealth of Australia, 1998:35) which indicate that:

- children of divorced parents seem much more susceptible to psychiatric illness;
- alcohol consumption by women whose parents divorced is far higher than women from intact families;
- the incidence of stomach ulcers and colitis is four times higher for men aged 26 whose parents had divorced before the child was five compared to those who had reached 16 years when their parents divorced;
- children of divorce living with their mothers have a 50 per cent greater risk of developing asthma, and a 20-30 per cent greater risk of injury; and
- parental divorce can be a factor in reduced longevity.

This same Parliamentary report refers to a number of studies (1998:36) indicating that marital disruption is implicated in youth depression and suicide and early sexuality.

Quoting a wealth of supporting evidence, Buckingham (2000) reports similar findings in relation to youth suicide, and shows significant associations between family disruption and crime.

Fagan (1995) has presented a review of many research studies showing the relationship of family background, especially family disruption, to the genesis of violent crime.

Reduced educational performance by children of divorced and sole parents is one of the most consistent findings of a large body of research (Rich, 2000; MacLean and Wadworth, 1988; Alison and Furstenberg: 1989).

In a large, well-controlled study of the familial factors involved in the well-being of Australian children, employing a sample of 2790 children between 4 and 16, Zubrick, Silburn, et al., (1997) established a number of 'risk' levels associated with family structure and parenting styles, schools, and the community. Although not directly a study of children of divorce, in assessing variability of risk in original, one-parent, and step and blended families, the study gave indirect evidence of the 'risk' consequences of deviation, whether by divorce or other events, from the natural two-parent household. It showed that children in one-parent and step or blended families faced higher risks to their well-being than children in intact original families after controlling other factors.

As the research summarised in Figure 8 shows, there is a significant increase in children's mental health problems as they move away from intact family circumstances.

(Insert, as Figure 8, figure 3.4 from p. 36 of State of the Nation)

In a review of 25 Australian studies up to 1996 of the social and psychological wellbeing of children from divorced families, Bryan Rodgers (1996:1) concludes that these studies: '....show that parental divorce is associated with many problems in adolescence and adulthood: poor academic achievement , low self-esteem, psychological distress,

delinquency, recidivism, substance use, sexual precocity, adult criminal offending, depression and suicidal behaviour.'

Paul Amato has carried out extensive studies of families and children, and the consequences of divorce, in Australia and the United States. In a magisterial and comprehensive review and summing up of the research on this subject, including Amato's own work, Amato and Booth reach a number of conclusions which they believe can be reliably offered about 'growing up in an era of family upheaval' (Amato and Booth, 1997). Their findings acknowledge both the circumstances in which children may adjust to divorce and the circumstances which may cause them suffering and continued sadness and disadvantage. For instance:

'For some children, problems associated with marital disruption improve over time, as children and their parents adjust to their new circumstances (Hetherington, Cox & Cox, 1982). But for others, the effects of parental divorce appear to last far into adulthood. A meta-analysis of thirty seven studies involving over eighty thousand individuals (Amato & Keith, 1991) indicates that adults who experienced parental divorce as children, compared with adults from continuously intact two-parent families, score slightly higher on measures of psychological and behavioural problems' (Amato and Booth, 1997:196).

There is a variety of ways in which divorce may increase children's stress:

'Although parents' marital conflict and other predivorce factors may account for some of the effects of divorce, marital disruption introduces new stressors that may affect children negatively. For example, divorce often results in residential moves (Astone and McLanahan, 1994); loss of contact with non-custodial fathers (Furstenberg and Nord, 1985); and changing schools, parental remarriage, and other life events that many children find to be stressful (Wolchik et al., 1985). Furthermore, divorce is frequently followed by a decrease in children's standard of living (Duncan and Hoffman, 1985; McLanahan and Booth, 1989). The economic deprivation associated with divorce may reduce the chances of attending college and acquiring a high-paying job (McLanahan and

Sandefur, 1994). The resulting low socioeconomic status and thwarted opportunitiies may be an additional source of psychological stress for young adults' (Amato and Booth, 1997:196-7).

Amato and Booth emphasise the central importance of what they call 'marital quality' for the rearing and wellbeing of children and conjecture also that 'a decline in marital quality contributed to the upward trend in divorce' (1997:218). And further: 'Poor marital quality, as well as declines in marital quality over time, are associated with problematic relationships with mothers and fathers (less affection, less consensus, less perceived support, and less help exchanged', and so on (1997: 219).

Finally, when poor marital quality over time culminates in divorce:

'Parental divorce also appears to have consequences for offspring, although these are not as pervasive as the effects of parents' marital quality. Parental divorce is associated with more problematic parent-child relationships (less affection, less consensus, less contact, and less perceived support); an increased probability of divorce among married offspring; and lower socioeconomic attainment (lower education, lower occupational status, and greater economic adversity). Furthermore, these associations are independent of predivorce conflict between parents. In other words, for these outcomes, low parental marital quality lowers offspring well-being, and parental divorce lowers it even further' (Amato and Booth, 1997:219).

As Amato and Booth point out, there are times when deteriorating marital quality, especially where violence and/or high levels of conflict are involved, can justify divorce as the lesser evil and in the best interests of children. Yet they also make this point: 'From our own data we estimate that less than a third of parental divorces involve highly conflicted marriages. Only 28% of parents who divorced during the study reported any sort of spousal physical abuse prior to divorce, 30% reported more than two serious quarrels in the last month, and 23% reported that they disagreed "often" or "very often"

with their spouses. Thus it would appear that only a minority of divorces between 1980 and 1992 involve high-conflict marriages' (Amato and Booth, 1997:220).

This is a very interesting finding which raises a number of questions in relation to the present high rates of divorce and the uncertainty of many marriages where conflict is not the key issue. But such a discussion must wait until we have further explored the consequences for children when their family situations change after divorce, or after de facto relationships break down and they move into homes comprising re-constituted or sole parent families. Since it is overwhelmingly the natural father who is either only intermittently present or wholly absent, father absence has recently become the focus of research to establish what the consequences of reduced contact might be for their children. Additionally, an absent natural father implies the presence of a non-biological father for children in step, blended and de facto families.

Father Absence

In 1960 about 90 per cent of children could expect to spend the years from birth to 18 with their married natural parents, but those days are long gone. Today, through divorce, separation, ex-nuptiality, step and blended family formation, cohabiting parents with children, and death, absence of the natural father from the home affects more than one child in four. By 1997, only 68.7 % of dependent children lived with their married natural parents; 5 % lived in a married step-family; 6.2% with a cohabiting couple; 5.6 % with a never-married single parent (almost always the mother); 11.2 % with a divorced single parent (again, mostly the mother); 1.2 %with a widowed single parent; and 2 % with neither natural parent (ABS 1999). The previous chapter, in discussing fathering, pointed to some of the unhappy consequences for children when that role is not adequately performed or not performed at all.

In discussing some of the reasons why father absence matters, McLanahan and Teitler find that reductions in income in sole parent or reconstituted families play a major role. Other reasons include emotional and behavioural responses to father absence, such as

feelings of betrayal and abandonment 'even in families where the parents' decision was mutual or where the father did not want the separation' (1999b:93). Also, angry parents 'may communicate their anger to the children who may feel pulled in two directions' and that: 'No matter what happens, children's trust has been seriously shaken' (1999b:93). The appearance of a non-biological father if the mother remarries or forms a de facto relationship may not improve matters:

'The quality of the parenting may continue to be lower even when the mother remarries. For a child who has already suffered through the parents' divorce, the appearance of a new step-parent can amount to yet another disruption (Hetherington and Clingempeel, 1992). With another change in personnel can come new rules, new roles, and confusion. Where a child's welfare is concerned, a step-parent is no substitute for the departed real parent. Moreover, with less commitment to the child, the step-parent is not likely to to be as effective a check on the mother's behaviour as the biological father. Nor does the presence of a stepfather ensure that the mother will have more time and energy for parenting. Rather, a stepfather often competes with the children for the mother's time and attention, leaving the mother more stretched than ever' (1999b:94).

Children in Step/Blended Families

After divorce or separation, most men and women with children will re-partner either through marriage or cohabitation. Cohabitation has displaced re-marriage more in recent years than in the past. In an era of high divorce, separation and ex-nuptial parenting rates, step/blended and sole parent families have increased to form a larger proportion of all families. Approximately 8 per cent of children aged 0-17 are living in a married or de facto step/blended family (ABS, 1999:22). Since about 70 per cent of mothers gain custody of their children after divorce or separation, the great majority of children in step/blended families live with their natural mother and a step father who has no biological bond with the child.

Studies of satisfaction of parents in intact families and parents in step-families indicate somewhat lower degrees of satisfaction among step-parents (Kelley and Evans, 1996:2). About 30 per cent of step-families break up within two years, which is a four or five times higher rate than for first marriage families, and at the end of six years the break-up rate is substantially higher than comparable first marriage families (Fergusson, et al.,1988). Clearly, this means that any children involved face the likelihood of a second wave of disruption in addition to the initial divorce or separation that led to the step-family.

There are other risks which they may have to confront. In a review of the research literature on the wellbeing of children in step-families, Lawton and Sanders conclude that: 'There is growing evidence that children living in step families are at greater risk of developing behavior problems, particularly aggressive, antisocial behavior problems, than children living in intact two-parent families' (1994:463). Their review notes various characteristics of parents and children in step-families recorded in the research literature and which arise largely from the restructuring of family roles and parent-child relationships; some of which are hardly unexpected. For example:

- children may resent the presence of the new step-parent and fear a loss or reduction of love by the natural parent (and indeed some research shows that such fears are justified);
- 'behaviours such as aggression , clinging, whining, and physically trying to get between parent and partner, may be forms of attention seeking' (Lawton and Sanders, 1994:474);
- poor parental supervision and involvement;
- 'custodial mothers were more emotionally withdrawn from their children, less able to monitor their child's behaviour, less consistent in their responses to the child, and less likely to use effective strategies for dealing with misbehaviour' (Lawton and Sanders, 1994:474).

In *Fatherless America*, David Blankenhorn (1995:191) quotes from a 7-year study by James H. Bray showing that step-father-child relationships in his sample of approximately 200 families, of which about half were step families, 'continued to be less positive and more negative, and became more negative over time than did father-child relationships'

School performance and problems at school, together with greater frequency of behaviour problems in general, are more likely amongst children of step-families compared to children in natural families, according to a study by Zill (1994).

Needless to say, children may thrive in step-families. But the risks for many are significant; and more so if the parents are not married. Most dangerous of all for children is the single mother who moves from one de facto relationship to another involving a succession of non-biological, boy-friend 'fathers'. In *Preventing child homicide: a report from the New South Wales Child Protection Council's Child Death Review Committee* (1995), the report's authors draw attention to the over-representation of step-fathers, de facto partners and boyfriends as suspected killers of the children they were living with. They were nearly seven times more likely to kill compared to the general population. Fagan (2000:7) quotes a British study showing that serious abuse of children in step families was six times more likely than for children living with their married natural parents; and quotes an American study showing that the rate of sexual abuse of girls by their step-fathers or mothers' partners is at least six or seven times higher than sexual abuse of daughters by their natural fathers.

Australian figures collated by the Australian Institute of Health and Welfare relating the frequency of child abuse and neglect to family structure indicate that the risk of child abuse in step/blended families and sole parent families is several times greater than in natural two-parent families (1999-2000:21-22). In terms of the numbers of children affected in different family types, figures for 1996-97, the most recent year for which this data is available, highlight the greater risk in non-intact families:

(insert table of figures "Child Abuse and Neglect by Family Type 1196/97" from middle of page 38 of State of the Nation, 2001)

In sum, therefore, there is confirmation from studies in Australia and other English-speaking countries of the significantly greater risks of child abuse as children, through divorce, separation and ex-nuptial parenting, move away from original two-parent families and into step/blended and sole parent families.

The Sole Parent Family

The sole parent family faces difficulties of a kind peculiar to itself - especially the absence of a partner (or at least a regular partner) with whom to share the labours, the responsibilities and the costs of child-rearing. The proportion of lone parent families is steadily increasing, because of divorce (62.3 %) and never having been married (31.1 %) (see Figure 9). By 2000 sole parent families (male and female headed) constituted 20.9 % of all families with children under 15 – up from 14 8 % in 1990 (ABS, 2001: 34).

(Insert, as Figure 9, figure 3.3 from p. 35 of State of the Nation, 2001, but adjust to extend block graph to include year 2000 as '20.9 %')

Remembering, of course, that we are comparing two-adult-plus-child families with one-adult-plus-child families, on average sole parent families receive an income approximately half that of couple families. Even after allowing for the reduced expenses of one versus two adults, disadvantages remain which are revealed in the life experiences of many children in sole parent families. Obviously, not all such children are at equal risk. The incomes of sole parent families vary as do the capacities of the parents to cope with the difficulties they face, and the extent to which they may be able to call upon relatives, friends and neighbours, and paid child-carers, to help. After taking such things into account, the fact remains that, on average, children in sole parent families depart significantly from the behavioural and achievement norms of children in two-parent families. To sum up:

- As shown earlier, the risk of abuse and neglect in a sole parent family is about seven to ten times greater in a sole parent family than in an intact two-parent family.

- Children in sole parent families are at significantly greater risk than children in two-parent families of falling into delinquency and crime, with father-absence, neglect and absence of supervision identified as the major factors involved.

- School achievement of children of sole parents is lower than that of children from two-parent families (Rich, 2000). Since parental education is a relevant factor in children's school achievement generally, and since sole parents have lower educational attainment on average, this parental deficit is part of the explanation, along with inadequate supervision and the absence of encouragement and help from another parent. Also, since better educational achievement of children is statistically linked with higher socioeconomic status of the parents, and since, as we have seen, sole parents on average fall into the lower income category, this adds to the disadvantage of children so placed.

- An American study indicates that children in sole parent families have twice the suicide risk of children in intact families (Buckingham, 2000: 59-60).

- Writing in the British Medical Journal, Roberts and Pless (1995:925) have found that the highest child death rates occur among children of lone mothers.

This last point is consistent with a more general finding from the British National Child Development Study, reported by Dennis (2000:47), that by age 7 death rates among children whose parents were not married when they were born were substantially higher than among children whose parents were married when they were born. Australian statistics on child death rates relative to various family structures cannot be quoted because the government agencies holding this information will not release it.

Several studies, mostly in the United States, show significant correlations between poor parenting, low educational achievement, low socioeconomic status, and low intelligence; with the further suggestion that low I.Q. is a key factor in low socioeconomic status and low educational achievement (Herrnstein and Murray 1994: 203-233). It is a reasonable inference that since sole parents are, on average, of lower educational attainment and

lower socioeconomic status, they have lower I.Q.'s, on average. This may help explain the higher incidence of evidence of poor parenting of children in sole parent families and, consequently, the over-representation among their children of neglect, delinquency and crime. The conclusion to be drawn is that problematic sole parenting is, to a significant degree, a phenomenon primarily among the poorly educated and lower socioeconomic groups. However, since a significant proportion of sole parenting is to be observed in upper and middle class families and among highly educated and articulate, opinion-leading women and feminists with few parenting problems, the developing underclass reality of sole parenting elsewhere tends to be dismissed.

On the whole, sole or single parenting and step/blended parenting do not compare favourably with parenting by married, natural parents. In a wide-ranging analysis of studies of family structure and child well-being, including single-parenthood, Waite and Gallagher conclude that 'children of married parents are physically and mentally healthier, better educated, and later in life enjoy more career success than children in other family settings' (Waite and Gallagher, 2000: 124).

The Children of Cohabitation

Direct evidence on the fortunes of children of cohabiting couples is relatively sparse and what knowledge we have depends upon relatively few studies and inferences from the evidence given above of the experience of children in married couple, lone parent, and step families, and the greater instability, compared to married couple families, of cohabiting couple families.

Sotirios Sarantakos (1996; 1997), carried out a comparison of 330 cohabiting and 330 married households, matched on various criteria, and, in a related study, 174 children living in married couple households, cohabiting heterosexual households, and cohabiting homosexual households. He found that:

- children in married couple households did better at school than cohabiting heterosexual couples and cohabiting homosexual (mostly lesbian) couples, with the children of homosexual couples doing worst;

- married couples supervised their children more closely than the other two cohabiting groups;

- children in the married couple group did best on scores of social behaviour and sociability;

- the rate of criminality of children of cohabiting couples was significantly higher than the rate of children of married couples.

In her study of cohabitation and its consequences, Patricia Morgan (2000) observes that:

- a British Department of Health study found that the prevalence of mental disorder was significantly higher among children of cohabiting couples than among children of married couples, but lower than the rate among children of lone parents;

- only 36 per cent of children born to cohabiting parents will live with both parents throughout childhood compared to 70 per cent of those born to married parents;

- a Swedish study of dissolution rates of 4000 couples with one child found that, on average, cohabiting parents were three times more likely to break up than comparable married couples.

Juvenile Crime and Disordered Families

In the study of juvenile crime, family circumstances have emerged as the most significant risk factor. As Don Weatherburn, Director of the New South Wales Bureau of Crime Statistics and Research puts it in a paper reviewing the crime literature and his own research (2001:3):'Factors associated with or indicative of inadequate parenting are among the strongest predictors of juvenile involvement in crime'. Reliable figures on juvenile violent crime on an Australia-wide basis are difficult to establish. Methods of reporting, recording, and collating vary from state to state. The most recent indication on a national basis is provided in Figure 10.

(Insert, as Figure 10, figure 7.13 from p. 108 of State of the Nation, 2001)

Of particular salience in juvenile crime is child neglect and associated factors such as poor parental supervision, large family size, and the family structures that are conducive to neglect and abuse, including sole parenthood where the responsible parent (almost always the mother) may be overloaded, poor and isolated, or living with a man other than the child's natural father. Other contributing factors, commonly associated with disordered family circumstances, are parental conflict, inconsistent or harsh treatment and discipline of the child, parental criminality, and parental violence.

In a correlational population study, Sullivan (1997: 49-52) found significant associations between ex-nuptial birth rates and sole parent rates, and rising violent crime rates, both 10 and 20 years later.

Conclusion

In the space of 40 years, as the divorce rate has quadrupled, as ex-nuptial births have increased sixfold, as more and more children are born into highly unstable cohabiting relationships, and as natural fathers disappear from one home in four, the well-being of hundreds of thousands of Australian children has been put at risk. The risk factors continue to trend upwards. The measure of the emotional and physical costs, and the social costs, of this profound transformation is seen in the misery and behavioural disturbances of children, in educational and occupational under-achievement, in child abuse and neglect, in inadequate socialisation reflected in rising juvenile crime – especially violent crime – in the despair of suicide, in increased risks of ex-nuptial births, and in a greater propensity of children exposed to these risks to reproduce in their own children the patterns of their own lives.

Perhaps for some children and some adults there have been countervailing and compensating benefits. Often the adult benefits are bought at the expense of children. But

it would be the height of Panglossian optimism to believe for one moment that the balance is a positive one.

One crucial fact stands out. For the overwhelming majority of children their flourishing is very strongly associated with their parents staying together in a stable marriage while they are being reared.

Against the background of the macro-social, cultural, economic and legal changes that have combined to deliver the family and child consequences we have discussed, it is time, given the crucial difference which marriage of parents makes to the well-being of children, to ask some questions about marriage and its nature.

Chapter 7

The Nature of Marriage

The discussion and evidence so far point to the centrality of marriage for a stable and successful family system. Essentially, marriage is a voluntarily established *union* between a man and a woman. This is the core of marriage. But those who marry choose to enter a union whose characteristics have been defined for them by history and the law. At this point it is thus relevant to examine more closely the essential features and meaning of this union - what it means to the spouses involved in it, the mutuality it implies, and the obligations of conduct that flow from it. Additionally, we need to probe the responsibilities of the state, through marital law, in helping to sustain the union and, as well, to search for the principles which, in tune with the rights of the spouses, should fairly govern the dissolution of a marriage. The conditions under which divorce is allowed may profoundly affect the way in which a marriage is conducted and hence its prospects of success. If marriage is to remain as a rule-governed institution vital to a coherent family system, its rules and their observance is an issue of the first importance.

Marriage in this generation has been so altered by changes in the law and by other developments already discussed that there is no longer a clear public focus or consensus on what it is. Those who want to get behind the changes to find the continuing essentials of marriage are more likely to find it in the rules (laws) that obtained prior to The Family Law Act 1975. In general discussions of the subject of marriage one is reduced to speaking about 'traditional marriage', in the hope that this term will still have some resonance.

Marriage in the traditional sense is not incompatible with freedom in the liberal tradition. That tradition acknowledges as fundamental both the right of an individual. to ownership and control of his or her body, and the right to ownership and control of legitimately acquired property. It also acknowledges that one may, short of enslavement, pledge

oneself and one's property as one pleases in association with others and in various enterprises within the law, provided nobody is harmed thereby. It also acknowledges that having promised freely to do something we cannot renegue without risking penalty. Accordingly, women and men are free to promise, to share, and to exchange material assets and forms of conduct, including prohibitions and guarantees in relation to conduct, as they choose. They are free to choose to put limits upon their freedom.

Social relations in general, including marriage and children, have been well served by such rights and freedoms. The presence of marriage as an institution has enlarged the possibilities for human fulfilment for adults and children. Marital relations imply both autonomy and limitations on autonomy – constrained freedom and constrained self-determination.

Marriage and Family

Marriage is constituted by a set of rules, socially determined, that is consistent with this conception of the person free to choose within the context of rights and obligations applying to all competent citizens. One is free to submit oneself to the rules of marriage and one is free to refuse to do so. But having freely chosen to submit to the constraints entailed in the rules, one must necessarily accept the obligations which follow. It is this which crucially distinguishes marriage from cohabitation. Although law is now intruding more into cohabitation, in principle it is a relationship simply accommodated within the basic rules of citizenship in general; its separateness from marriage being marked precisely by the absence of the specific rules of marriage which proclaim marriage's special status and the particular duties of conduct implicit in obedience to its rules and pledges.

If we ask why the rules of marriage have taken the form they have and which distinguish marriage from cohabitation – both juridically and historically – we must search for answers that take us outside the private realm of a man and woman seeking private satisfactions. The plausible answer is that marriage is, and always has been, indissolubly

tied to family formation and thus to wider links with the general life of society and its future beyond the private. Marriage is the genesis of family life. It creates and publicly legitimises a union of a distinctive kind between men and women, freely entered into without coercion, which establishes a joint household and which may initiate procreation - the creation and socialisation of new citizens for the renewal of the society. Children require a social identity and formal assignment of adults – normally the biological or natural parents - to take responsibility for their early care and socialisation. Marriage articulates the rules designed to achieve these ends. Marriage is therefore a *social-legal* institution embracing continuity between a private order of spouses and family life and a public order concerned with protecting the well-being of children; and - as the custodian of justice - the rights of spouse-citizens.

Is Marriage a Contract?

In spheres other than marriage, the decision by free agents to engage in an exchange or joint enterprise is usually sealed by agreement, with or without a formal contract. Where important interests are at stake, contracts are usual. Does marriage therefore fall within the ambit of contract and should the law of contract cover, or be allowed to intrude upon, marriage? Many commentators on marriage and the family, including myself (Maley, 1992, 1996), have approached marriage as having *at least* some of the elements of a contractual or quasi-contractual relationship. In several respects, marriage mimics a contractual relationship, but a simple, unqualified contractual view of marriage does not adequately characterise it. There is much about marriage legally, in legitimate expectations, and in practice, which falls outside the ambit of contract. In what follows I draw upon some arguments put by Winfield (1998:75-81) and from my earlier remarks in the opening chapters about the public character of marriage.

At the heart of commercial contract, understood as a relationship contingent upon the property rights of the parties in goods and services, is an exchange of factors external to but under the control of the parties concerned. Essentially, it is alienable goods and services (e.g. property, money, labour,) which are the substance of contractual exchanges.

The parties to contracts remain independent persons. Commercial contracts cannot involve "internal, as opposed to external, factors, such as love and sentiment, for the simple reason that all internal matters lack the externality that enables them to figure as property" (Winfield 1998:76).

Winfield criticises the attempts by Locke and Kant to construe marriage as a contract between spouses to trade exclusive use of their bodies. If taken to mean the use of their entire bodies, then this is tantamount to an inclusive and mutual enslavement which would negate the possibility of the independence to own or control anything else. Such a view of marriage as contract is incoherent. On the other hand, if 'use' of the other's body is confined to sexual use "it becomes mutual barter prostitution" (Winfield, 1998:76). This is to erect a false dichotomy. Certainly, 'body-use-on–demand' would be tantamount to slavery, or prostitution if a 'consideration' of some kind - either money or a service - were involved. But mutual agreement to 'use' (unfortunate word) each other's bodies in sexual activity between husband and wife absolutely distinguishes marriage from prostitution and is central to understandings about marriage, though not amenable to contractual specification. Such agreement cannot be construed as a contractual 'consideration'. It is precisely the 'internality' entailed in mutual agreement without a 'consideration' that distinguishes marital conjugality from a contractual arrangement.

Save where statutes impose specific constraints and conditions, ordinary contracts, in the liberal tradition, can embrace any kind of exchange provided legitimate property rights are involved, provided that there is no duress or deception, and provided they do not violate the rights of others. Otherwise, the parties can construct whatever details they please. This is not true of marriage, upon which legally enforceable restrictions are placed of a kind that are not placed upon contracts, and which are not to be found in statutes pertinent to contract. As pointed out earlier, marriage entails legal prohibitions on the choice of partners through incest taboos, and prohibitions on polygamy and partners of the same sex. Even though they have become minimal in recent times, the restrictions and conditions still placed upon annulment and divorce are alien to contracts. Compulsory principles attach to marriage that are not subject to contractual revision. The

Federal Government has recently foreshadowed the introduction of legislation to authorise the acceptance, under certain conditions, of pre-nuptial contracts. At present, however, Australian family law refuses to enforce contracts between husband and wife. This is an important example of the more general point that the terms of the marriage agreement are not determined by the parties to it.

Unlike contract law, which requires that the terms of the contract be disclosed in full to the contracting parties, there is no requirement in law that the parties to marriage should be formally advised beforehand of its terms, such as the text of the Family Law Act. The words and vows of the marriage ceremony, whether religious or civil, do not cover every aspect of marital law, and the vows – though solemn undertakings which signal consent to the obligations of marital conduct they convey - do not constitute a formal contract. This indicates that the terms of marriage are not determined by the parties but by an external authority - the state - independent of the marriage partners. As I suggested earlier, the broad terms of marriage, its traditional expectations, are known to prospective spouses by means that have nothing to do with the making of the marriage itself. And the broadness of the terms (e.g. mutual care, pooling of assets) are indeterminate in a fashion inconsistent with notions of contract. Society, in the person of the state and law, determines the terms of matrimony and conjugality. The obligations, duties and rights of spouses are not worked out in prior negotiations between them. They are already there as historical givens, enshrined in law.

That last sentence has lost much of its force with the introduction of 'no-fault' divorce in 1976 under the Family Law Act, 1975. That Act represented a radical and fundamental break with the 'historical givens' of traditional marriage that applied before it became law and which sundered our former understanding of the obligations, duties and rights of spouses. But these are matters to be taken up a little later. In relation to the discussion of marriage and contract, however, the Act, in allowing either spouse to simply walk away from a marriage for a year and unilaterally end it, is a contradiction of the normal terms of contract and an example of the way in which the terms of marriage are set by the state and externally imposed, rather than being a term of an agreement between the partners.

Further, as Winfield, following Hegel, points out, the terms of a commercial contract can be carried out some time after the contract is made, whereas the act of marriage instantly "ushers in the practice of matrimony with all its attendant rights and obligations" and this indicates "how the marriage agreement gives its newlyweds a qualitatively novel status, in distinction from contract, which simply enacts a particular property arrangement between persons who already are immersed in property relations. In effect, individuals have already left behind the external relation of unattached persons the moment they publicly agree to become conjugal partners…." (1998:78).

In short, since the state determines its terms, marriage is not simply a contractual relationship, but it shares with contracts the voluntary submission of parties to the acceptance of obligations and duties. Additionally, as it has been traditionally understood, marriage goes beyond ordinary contractual relations by including a superordinate ethical component comprising promises, or vows, to observe standards of conduct which are beyond contractual specification and which are unique in being comprehensively 'conjugal'. This transforms what would otherwise be a limited, 'external' relationship between individuals into a legal unit or community, a 'family', which henceforth has that social identity and status, and sustained as such only so long as it continues to be the site where the rights, duties and obligations of marriage (and parenthood) are observed. Marriage consists in a total merging of what the spouses are and what they have in a putatively permanent (Section 43(a) of the Family Law Act, 1975), domestic enterprise of an inclusive kind.

The life of marriage is beyond contractual specification except for those acts (e.g. infidelity, desertion, violence) which constitute fundamental breaches of the relationship. In all other respects the daily observance of mutual care, cooperation and domestic duty is so infinitely detailed and variable that contractual specification would be laughable. And the more so when children and other close relatives are involved. We cannot limit or specify by contract what is owed to a child or foresee the vicissitudes of child-rearing; or define what is owed by a married couple to parents and parents-in-law.

Having emphasised the notion of *union* as defining of marriage, it is appropriate to note that such a union is not incompatible with individual interests and rights in marriage. Spouses retain their rights and obligations as persons, citizens, and moral subjects, with the freedoms and constraints that accompany that status. Each spouse retains ownership and control of his or her body. A spouse in no sense becomes the property of the other and may, if wronged by his or her spouse, appeal to the law for protection and punishment of the offender. Although offences against the person within a marriage may thus be dealt with as in any other context, non-criminal misconduct which offends traditional presumptions about the obligations of marriage – not to commit adultery, not to be cruel, not to be habitually intoxicated, not to desert a spouse, etc., – no longer carries any penalties, following the introduction of no-fault divorce. Such misconduct in a no-fault regime is irrelevant to the terms of a post-divorce settlement while, in a fault-recognising regime, misconduct may be taken into account in the terms of settlement to help rectify the injustice and/or damage to the affected spouse. This is an issue to be explored in more detail later.

The Lost Meaning of Marriage

We live in a time when cohabitation and de facto partnerships have seemingly become regular substitutes for marriage. Such relationships are terminated much more frequently than marriage when love, happiness or convenience disappears. Nevertheless, the increase in cohabitation and de facto partnerships, the conflicts which often attend their dissolution, and the frequent involvement of children, have persuaded governments gradually to bring such informal relationships within the ambit of laws paralleling those applying in marriage to the distribution of property and awarding of maintenance and custody when the relationships end. The consequence has been to bring de facto relationships closer to marriage at the same time as the status of marriage is brought closer to an informal relationship. Nevertheless the residual differences are significant. The formalities that begin and end a marriage are more extensive because spouses retain juridical rights and duties which do not apply to cohabitees or de factos. All of which

suggests that the law and communal perception tacitly acknowledge, on the one hand, that the marriage bond is not defined by the durability of love, happiness or convenience; yet, on the other hand, in allowing one year's separation as grounds for divorce, the law is exactly defining marriage as only this. The fact is, however, that the duties and responsibilities of marriage accepted with conjugality and absorption in maintaining the domestic and familial enterprise, may have their own 'passions' and sustaining motives sufficient to keep the enterprise viable and the partnership intact and mutually respectful, even in the absence of married bliss. Winfield puts it this way:

'Accordingly, marriage can be said to contribute a positive freedom in which the immediacy of romantic love becomes mediated by an objective bond, formally recognized by spouses and outsiders alike to empower spouses with juridical entitlements that are not simply expressions of the passions of individuals. The *recognized* prerogative to codetermine a joint domesticity is a right that unmarried lovers never attain without making the transition to conjugal partners, be it through formal marriage or public recognition as a "common law" couple. Partners in romance each may feel sufficiently enamored to share everything, but the shared feeling to do so is something different from enjoying the objectively acknowledged entitlement to comanage a consolidated private sphere in which the merging of the welfare of each party is obligatory' (Winfield, 1998:85-6).

The 'objective bond' of marriage and the rights and entitlements of spouses are the formal conditions which help define marriage above and beyond 'the passions of individuals'. There is, however, a 'passion' of individuals without which marriages are unlikely to endure. Marriage requires individuals to commit themselves to each other and to the fact of their union. If not a passion in an ordinary sense, commitment is certainly a moral resolution to live up to an ideal. Yet men and women cannot find wholly within themselves the power of commitment. Commitment is a recurring determination to abide by a standard of conduct or performance and to transcend selfish distractions in support of something outside oneself but crucial to one's identity. Committing oneself to a marriage is, in that sense, the nexus between individual conduct and a cultural ideal

presented to us by the society we live in. It means doing one's best to live up to that which has been deemed culturally admirable. If marriage, and commitment to it, are no longer seen to be culturally admirable they will fade away as important aspirations and parts of our identity. Avoiding that requires us to take marriage and the kind of freedom it offers seriously.

If it is the mutual rights and obligations of marriage which distinguish marriage from a relationship of mere romance, convenience and sexual cohabitation, then current family law denies access to this form of freedom. It is ceasing to support the distinction and has thus impoverished the choices of men and women; offering instead a denatured, quasi-conjugal alternative in which the protection of rights and entitlements, inseparable from freedom, is not available. The restoration of freedom and confidence in marriage depends upon the conditions which are applied by family law to separation and divorce, and protection of the interests of children.

Divorce

Family law has no necessary role to play for those who are simply companions, sexual partners, cohabiters, room-mates or house-sharers, no matter how deep and enduring such relationships may be. If children are not involved, when problems arise which are worthy of public notice and action, recourse to existing civil law should be sufficient . It is open to cohabiters to arrange joint ownerships, wills, powers of attorney, and so forth, to protect their interests if they wish. Both marriage and cohabitation are species of freedom. Cohabitation may be sought precisely because it allows options not open to the married, and the absence of marital constraints is not inherently unjust, except to the extent that it may prejudice the well-being of children. Married freedom, on the other hand, is defined by a voluntary domestic union of merged property and unbounded, indefinite and joint commitment to the domestic enterprise, to the care and welfare of each other, and any children the couple might have. It has this special associational status under family law. The just and legitimate dissolution of such an association, other than by death, must engage the attention of family law, with due care for the practical dimensions

of the relationship – especially children and property – and for the mutual obligations that constitute it. So married couples cannot divorce themselves; it must be done through application to the Court and decision by it. Both cohabitation and marriage, as forms of freedom, are threatened when the distinctions between them are forcibly removed. A critical issue for marriage, but less so for cohabitation in the absence of children, is the manner of dissolution of the relationship.

If one function of marriage is to bind the parties to the obligations they have freely undertaken, failure by spouses to meet them should not be irrelevant to family law. If they are made irrelevant to family law, the obligations become meaningless and marriage, as an estate distinct from routine civil relations, will disappear. This is precisely what is happening, in vital respects, with the passing of the Family Law Act 1975. Misconduct in marriage, less than criminal but failing to meet its obligations because of unfaithfulness, habitual intoxication, desertion, etc., is now wholly irrelevant to the terms of a divorce settlement. With separation of the spouses for one year being evidence of 'irretrievable breakdown' of a marriage and the sole ground for granting a divorce, the law no longer recognises the reality of 'fault' in a marriage and, consequently, takes no heed of misconduct as a factor relevant to a divorce settlement.

In such a regime, marriage is made immediately vulnerable to the routine hazards of boredom, quarrels, the burdens of children and maintaining a home, and changes in feelings. When it is no longer seen as a necessary part of marriage to accept disciplined and persistent behaviour in the face of irritations and dissatisfactions, its stability is put in jeopardy. In the absence of spousal malice or serious misconduct, then, cause for separation is easily and often selfishly found. Marriage is not compatible with the instant gratification of every whim and speedy flight from every difficulty. If perpetual happiness is taken to be a necessary condition for the continuance of a marriage, the possibility of genuine marriage, especially for life, disappears, along with the incentive to forgive and forget the quarrels and upsets which occur in every marriage.

It would be the negation of what marriage has meant for centuries if spouses were free simply to decide to get divorced without good reason. The reasons for ending a marriage demand external judgement of their validity, and certification in relation to legally specified criteria. Divorce on demand should not be available, nor should it be open to a spouse to simply walk away from a marriage for a year and thus unilaterally end it, or merely to claim discord, with divorce to follow automatically. There should be a public inquiry and determination whether an irretrievable breakdown has in fact occurred and the reasons for it. To accept one year's separation as evidence of 'irretrievable breakdown', as family law now does, is fatally to diminish marriage so that it becomes a lesser thing than a mere commercial agreement.

We are dealing with more serious reasons for separation or divorce if breakdown is the result of misconduct - of a spouse's failure, to observe the critical obligations of marriage. What constitutes the 'critical obligations' is, of course, an issue that requires careful definition, together with external judgement and determination whether they have been breached. I should emphasise here that I am not moving towards a recommendation to reintroduce misconduct or 'fault' in these respects as a necessary *ground* for allowing a divorce to take place; but there are good reasons, as I shall argue, for allowing fault to figure in determining the terms of a divorce *settlement*.

It was, of course, the difficulties of faithfully implementing 'fault' divorce in the face of couples who, wishing to separate, conspired to produce spurious evidence of marital misconduct, or 'fault', which in part was made to justify the abandonment of fault-based divorce. When independent evidence of the presence or absence of fault cannot be produced to a court, effective inquiry into the secrecies and intimacies of marriage is difficult and distasteful, to say the least. As the Attorney-General at the time of the introduction of the Family Law Act 1975, Senator Lionel Murphy, remarked: 'an inquiry into the cause of breakdown was not proper' (Sifris, 1998:2). This was the view which prevailed at the time. Yet marriage is too important an institution to be undermined by convenience and pragmatism. If marriage has the character and ethical content we have

attributed to it, the rights and obligations of the parties to it cannot be so easily dismissed; nor the aspirations of those contemplating marriage so readily betrayed.

Our concern for the moment is with principles rather than the practicalities of inquiry and judgement.

Fault and No-fault Divorce

The form in which no-fault divorce exists in Australia and some other countries, such as the United States, requires no more than a period of sexual separation (the couple may continue to live in the same house) as evidence of irretrievable breakdown of a marriage and sufficient condition for the granting of a divorce. The separation may be the decision of either one or both parties, and it could be that one of the parties does not wish the separation, but this is irrelevant to the outcome of a divorce application under present law. I have already suggested some of the reservations one must have about allowing the wish of one spouse, or the consent of both, to be a sufficient condition for allowing a divorce to proceed, but more needs to be said.

To allow a divorce simply because spouses have separated because they feel like it, or claim to be agreed, is for the law to ignore a duty to investigate whether or not a marriage has truly broken down, in the sense that the rights and obligations inherent in the marriage union have been breached by one or both spouses. To proceed in such a way is virtually to reduce marriage to simple cohabitation, terminable at will. What if the separation is not by mutual agreement, and one spouse does not wish the marriage to end? Is the flight of the other spouse sufficient demonstration of irretrievable breakdown and acceptable in itself? If such a desertion is acceptable, the rights of the other spouse in the marriage are set aside by fiat of his or her partner and then automatically endorsed by the Court. This is abdication of the duty to care for both the private and public interests in marriage.

However, if more than the mere wishes or feelings of spouses is involved in a separation and petition for divorce, if it is the result of marital misconduct by one or both, or the result of profound, irremediable and mutual estrangement, that is a different matter. It is evidence of a genuine breakdown. Nevertheless, it is precisely the duty of the court to establish what is the case and whether there has in fact been a breakdown of conjugal community in these ways before permitting a divorce. The vital point is that the law's responsibility to the institution of marriage requires a finding based on evidence to that effect. That responsibility is abandoned when no more than the *fait accompli* of a year's separation is accepted as sufficient by the Court. At a time when dismissing an employee engaged the week before may expose an employer to the possibility of an extended investigation by a tribunal and a substantial fine for 'wrongful dismissal', one spouse can dismiss the other after perhaps 30 years of marriage, with no inquiry, no prospect of any penalty whatsoever, and with no preliminaries except separation for one year.

Divorce Settlements, With and Without Children

Marriage, conceived as a merging of belongings and mutual care in a joint domestic enterprise, carries with it the presumption that upon divorce and settlement all property, savings, and superannuation entitlements brought into or accrued during the marriage are jointly and equally owned and should be equally distributed to the partners by the Court. That presumption could be upset if

(a) the future earning potential of a spouse has been prejudiced by performing marital duty, such as full-time house-keeping;

(b) fault - marital misconduct - should justify compensation for any injury done to the marital expectations, well-being, and investments, both material and non-material, of a spouse not guilty of contributory misconduct;

(c) children are involved.

Taking each of these conditions in turn, a spouse whose future earning potential has been disadvantaged by sacrifices during marriage should, in fairness, receive at the divorce settlement such compensation through additional property or maintenance (alimony) as to remove the earning disadvantage due to the marriage; unless he or she is guilty of marital misconduct. The property settlement or maintenance should be arranged so as to remove the disadvantage and no more.

Marital misconduct – as a serious breach of the duties of marriage and the legitimate expectations of a spouse - should be relevant to the terms of a divorce settlement, entitling the victim to seek compensation through the settlement if he or she wishes to do so. The first duty of law is to uphold rights, to deter transgressors and to hold perpetrators responsible, as far as possible, for compensating the victim. To fail to do so , and to deny such an entitlement, is to diminish the dignity and substance of marriage and marital commitment and to encourage misconduct. Accordingly, upon divorce under such circumstances, it should be open to the victimised spouse to seek and justify compensation before the Family Court through a differential property arrangement and/or maintenance as part of the divorce settlement.

Divorce, as we have seen earlier, may profoundly affect children and their futures for the worse. Nevertheless, in some cases of family conflict, violence and abuse, divorce may be to the advantage of children. Some have argued that divorce should not be allowed, or should be more stringently conditioned, when existing marital discord or alienation present no threat to the welfare of children. In such cases the parents, it is said, should be required to stay together 'for the sake of the children'. But to require this indefinitely in a situation where a court has found that the marriage has indeed broken down for good reasons would be to surrender the rights of spouses and undermine the ethical basis of marriage. But what of the rights of the child or children to be brought to maturity and autonomy under the care and instruction of their parents?

The powerlessness of children in the face of divorce, and its consequences for them, force us to ask whether divorce where minor children are involved justifies a different legal

approach aimed at better protecting their interests in a marriage that is not marked by serious conflict, abuse, or violence - which is the case with the great majority of marriages which break up. It would seem reasonable to expect that a marriage involving dependent children should require much closer scrutiny before it is dissolved than a marriage which does not involve children – certainly more attention from the courts than accepting one year's separation of the parents as sufficient. It may be worth considering special conditions for divorces involving dependent children, with provisions, if there are good and urgent reasons, for a prompt separation but short of dissolution of the marriage. In non-emergency situations, these conditions could involve a longer waiting period, without separation of either parent from the household, a more rigorous scrutiny of the claim for irreparable breakdown of the marriage, requirements for counselling, and perhaps other measures designed to avoid precipitate divorce and to provide opportunities for reconciliation. Such marriages, it would seem, could probably be held together at least until the youngest child reached, say, the middle teens. The Court could have power to refuse a divorce or separation for, say, three years, with further review at the end of that period only if one of the spouses sought it.

Additionally, a spouse who leaves the family home without just cause having been shown to the Family Court, might be deemed to have abandoned the child or children and, prima facie, to be an unfit person to have custody of the child or children unless the Court is satisfied that some form of custody or access would be in the best interests of the child or children. Similar considerations of the best interests of children could influence property decisions at a settlement. For example, a deserting or adulterous spouse who is nevertheless a good parent better able to care for children might be awarded free occupancy (if not ownership) of the family home, and even maintenance, if the Court believed this was in the best interests of the children during their minority and not too unfair to the other spouse. The opportunity should be given to the Court to balance the delivery of justice to spouses who have been badly used while ensuring the best interests of children, and to change the settlement conditions (e.g. maintenance) when children reach maturity.

One would hope, as knowledge of the generally unwelcome effects of divorce on children becomes widespread, that parents otherwise contemplating divorce will strive harder to avoid it. But if divorce for good reasons, attested by court inquiry, is inevitable, there is no reason why divorced parents cannot conscientiously continue to perform their parental duties to the best of their ability. Their joint obligations to the welfare of their children survive divorce, and scrutiny of the faithful performance of that duty is a proper responsibility of the law and the Family Court. Part of that responsibility needs to be carried out through the terms of the divorce settlement in matters of property, ownership of the family home, and custody arrangements; bearing in mind that the latter may be properly affected by certain forms of marital misconduct or abuse having implications for the suitability of a parent to look after a child. Otherwise, joint custody must be the point of departure, subject to any modifications agreed by the parents and endorsed by the Court. It is worth noting that a presumption of joint custody may reduce divorce rates. The divorce rate has gone down in American states where joint custody is the rule. Competent parents, in circumstances where there is no proof of neglect or abuse by one or other, should have equal and joint rights so far as the future welfare of their children is concerned. Except where babies are involved, there should be no presumption that the mother or the father, simply by that status alone, is entitled to superior rights. In practice, the arrangements for the care of a dependent child or children should determine how day-to-day parental responsibilities, and property, are distributed. For example, if one parent more than the other is able and willing to give the appropriate close and sustained daily care this should influence a court-approved care and custody regime, and also the range of day-to-day authority exercised by that parent. If, for such reasons, the main burden of care is to fall upon one parent, the terms of settlement must recognise this disadvantage and respond accordingly. The essential point is insistence upon the continuing duty of both parents to contribute financially and in other ways to rearing their children to maturity.

Justice in Marriage and Divorce

The foregoing discussion offers a point of view on the nature of marriage, the freedoms, rights and obligations which constitute its ethical substance, the duty of family law to protect that ethical substance, and how a principled position on marriage and divorce might be expressed which takes marriage seriously. It is put forward as a basis for exploring what needs to be done to restore marriage as an institution within which men and women may live together in good faith and confidence, and within which, if children should be involved, their well-being is more likely to be fostered.

In the preceding chapters some reasons were offered for the decline of marriage. Its present fragility brings to the fore the pivotal role of divorce law in accelerating the decline or helping to arrest it. What I have said so far is not, nor is it intended to be, a polemic against divorce. I believe the importance of marriage declares the importance of the right to divorce when a marriage has been destroyed. There is no duty to marry, only a freely exercisable right to do so, but that does not imply a right unilaterally to withdraw from a marriage, once made, without cause and without external certification that the cause is a just one. The duties to spouse and children, promised in marriage, and the reciprocal investments made by spouses in the expectation that those duties will be fulfilled, require no less than that. Divorce, therefore, must be allowed to a spouse suffering under a failure of marital duty by his or her spouse. Equally, spouses must be allowed to remove themselves from a marriage characterised by irreparable alienation which does not entail a failure of marital duty by either party; but here, too, there must be an independent and authoritative finding by the Court that this is indeed the case. In other words, I believe that the dichotomy of fault and no-fault divorce is misleading. 'Fault' - not as a necessary condition of divorce, but as a circumstance which, if shown, may affect the terms of a divorce settlement - and no-fault divorce can coexist and be complementary.

To take account of fault as an issue that *may* be raised by an aggrieved spouse only in a divorce settlement is fundamental to the status of marriage and to dealing justly with the partners in marriage. If the Family Court is to dispense justice rather than simply administer the debris – human and material – of a *fait accompli,* there is an obligation

upon it to attend to the legitimate claims of parties who have been wronged in marriage – but only if such a claim is raised by a spouse and evidence presented. Family law, before 1975 and subsequently, has built up a body of case law in such matters which is available for dealing with situations where fault would remain irrelevant to the granting of divorce but relevant to the terms of settlement.

I have done little more than sketch the outlines of a regime that would permit this. My main intention has been to emphasise the importance of taking marriage seriously and to deplore its contemporary trivialisation. That process has gone a long way when the Chief Justice of the Family Court declares that he wants his Court to become a court of 'relationships', to cover the breakdown of homosexual and non-marital heterosexual relationships (Farrant, 2001). Taking marriage seriously means re-asserting the centrality and portent of commitment. In the recent past the word 'commitment' has been routinely mouthed as if it were something nice, but not *really* binding; as something subservient to an overriding interest in easy departure if the going gets tough. It is the height of irony that we are currently engaged on a course of imposing upon cohabiting relationships a range of regulations and obligations in matters of property, and even maintenance, which, I suspect, most partners do not want, and of taking cohabitation much more seriously than is necessary or fair, while the best we can offer to those who want *marriage,* who want permanence, who seek shared commitments, is a relationship which is becoming more like licensed cohabitation. As I argue later, it is certainly important to take cohabitation seriously when children are involved.

Pre-marital Contracts

The coalescence of marriage and cohabitation has been further advanced by the proposed legislation to allow the enforceability of pre-marital contracts, subject to some conditions, such as the right of the Family Court to set aside contractual terms considered to be not in the best interests of a child. It is overlooked that this demand has arisen in part because the law expunged the relevance of marital fault, and ceased treating marriage as a binding commitment. One cannot foretell the future, but one suspects that if a 'contractual' view

of marriage becomes dominant, it will mean the further de-construction of marriage and the generation of even more litigious conflict. John Rawls (1971) has spoken of the 'public system of rules' that defines a genuine institution The multiplication of individually-tailored contracts to determine spousal rights and duties would spell the end of marriage as a social institution comprising a single, coherent set of rules of universal application to those who chose to marry. This is not to say that there is not merit, in some circumstances, in pre-marital contracts, especially when the purpose is to protect the interests of a third party (for example, property entitlements of a child by a previous marriage, or of parents), but if used primarily to isolate certain assets from the immediate and distant enjoyment of a spouse, for example, then it is the negation of the notion of joint pooling of assets in a common household that is an essential aspect of marriage. The reason why this might be sought highlights the deficiency of not allowing marital fault to be a factor in divorce settlements. A spouse who marries solely for the cynical purpose of 'gold-digging' is protected by a regime which permits him or her unilaterally to divorce and then collect, by right, half of the property of the asset-rich spouse. If fault were to be an issue in such circumstances, unilateral exit without good cause could legitimately affect the divorce settlement.

I do not underestimate the complexity and difficulty of the manifold issues of principle and practicality that arise with the dissolution of a marriage, especially when children are involved. Again it is ironic that, when the present regime came into force in 1976, it was welcomed as a new era which would see the end of most of the acrimony and heart-ache that attends separation of the spouses, and the elimination of extended litigation. Instead, we have seen little diminution of bitterness and even less acceptance that the conditions of divorce are just. A spouse who had been deeply wronged by marital misconduct short of outright criminality has absolutely no recourse before the law for recognition of the wrong done. It is little wonder that some seek to vent their rage upon the court and its officers or unlawfully to exact revenge.

Although serious litigation over property and custody issues involves a small proportion of divorces (about five per cent or so), anecdotal evidence, news stories and press articles

suggest that many divorces involving no recourse to litigation nevertheless leave a considerable number of spouses wounded and bitter and feeling that justice has not been done.

The lives and fortunes of millions of Australian adults and children depend upon the integrity and stability of marriage. Its integrity depends upon taking its moral dimension seriously in the law, and practice will largely follow what the law decrees. Law-abiding practice yields stability and predictability. At the centre of the moral dimensions is conduct that strives to keep faith with the promises to spouse and children implied in conjugality and the establishment of a domestic life. Actions of a spouse which undercut or betray the ethical community created by marriage cannot be ignored if a divorce is sought. Those actions deserve the attention of the law and the Family Court and, if proven, condemnation and sanctions by the law, if sought by an aggrieved party, as the voice of the whole community, because the whole community, as we have earlier seen, is party to marriage and has a stake in its integrity. In other words, in divorce, we have an issue of justice and fair treatment deriving from the significant moral character of the marriage union, and the major human investments committed to it because that character invites the confidence of the partners concerned.