



# Relative

## FAMILY AND CHILD PER

**T**his paper explores some of the implications – social, psychological and legal – of relative deprivation in the context of families and divorce. Of course relativities have a subjective component and in examining some intra-familial relativities the child's view is included.

**Relative deprivation between groups in society can result in intense frustration, inter-group hatred and ultimately such conflagrations as the Watts riots in Los Angeles. KATE FUNDER argues that from the point of view of social justice and the cohesiveness of society, relative deprivation is a matter for the attention of social policy and law.**

### Absolute and Relative Poverty

Fortunately, in Australia we have few cases of absolute poverty – defined as severe deprivation of nutriment and shelter. That we have any cases is lamentable; that these cases occur more frequently among Aboriginal people and the homeless, appreciably shortening their lives as children and adults, requires vigorous redress. McLelland and McDonald (1995) point out, however, that poverty is more frequently viewed as relative, 'lives clearly deprived in comparison with the majority of the population'. It is this definition of poverty which guides debates in the area of family law.

Manifestations of poverty outlined by McLelland and McDonald are the inability to afford goods and services, or to participate in the social activities which make up the Australian standard of living. They cite Townsend (1979) who links poverty with 'a sense of exclusion from ordinary living patterns, customs and activities and from the wider community'.

A first response to relative poverty in our society may be to the personal hardship of individuals and families who are poor. To the personal face of relative poverty, however, we must add the civic risks which affect us all. The OECD (1990), in documenting the poverty of sole-parent families,

makes this argument: if we fail to attend to relative poverty it is at a cost to us all; the exclusion of a segment of the population from full participation in western democracies is a direct threat to the *solidarite* of the society; on this *solidarite* depends internal peace and order, productivity, and assent to a common infrastructure and elements of redistribution of wealth essential for the common good.

The OECD argument referred specifically to the threat of exclusion which faced impoverished sole parents. The OECD contends that if we fail to attend to the relative poverty of sole parents (mostly women) we do so at the peril of the future of our society

since these parents are responsible for socialising the next generation. If the children reared in sole-parent families have mothers/models who are disenfranchised and alienated, they will develop expectations of powerlessness, be remote from political processes in neighbourhood, city and state, and may well become an underclass. (In parenthesis, a frequently put question is whether sole mothers make good parents; put in personal terms, the question addresses the capacity of the mother. However, a more pertinent question implied by the OECD is: how can we assure children and their mothers full access to society, and not just for their sakes, but for ours?) I shall return later to the inter-generational dimension of the poverty of sole parents.

### **Family distribution of poverty**

The multiplication of risks of poverty in different family types is well documented. Taking childless couples as a beginning point, McLelland and McDonald (1995) present Harding's (1994) data to show that childless couples have a poverty rate around 7 per cent. With the addition of children, the couple's risk of poverty comes close to doubling. Sole parenthood, however, increases that risk three-fold. Since both the number and rate of children living in poverty rose during the 1980s (Gallagher 1985), the problem of poverty, which is 'ours' not 'theirs', requires our most constructive solutions.

Inequality of access to 'fringe benefits', documented from the 1993 Australian Bureau of Statistics Labour Force Survey figures (Funder and Millward 1993) reveal low rates of superannuation, on-job training, flexibility of hours and other benefits in sectors and jobs where the majority of women work. In the same analysis, male sole parents appeared to suffer few, if any, of these disadvantages. Male sole parents are more likely to be employed, to have higher incomes and more fringe benefits and flexibility in their work than their female equivalents.

In summary, it is essential that the relative disadvantage of female parents, and particularly female sole parents, continues to be tackled. A program such as Jobs, Education and Training (JET) which increases women's access to employment through raising skills and assuring child care for sole parents is a good model. The larger picture requires more general attention to the linkage of market work and caring for all parents.

### **Wage rates**

An essential anti-poverty measure is an adequate minimum wage rate. McLelland and McDonald quote Castles and Mitchell (1994) to indicate how poverty has become institutionalised among the working poor in the United States. Dornbusch (1990) endorses the centrality of an adequate wage rate as the underpinning of family justice. In a study of homeless families, he found a 'surprise' group. This comprised families with two

have fewer superannuation credits of their own, have only notional offsets in matrimonial property settlements in lieu of sharing their former spouse's credits amassed during the marriage, and thus have even greater risks of poverty in old age (Joshi 1992).

Family law is now much more rigorous in including superannuation in financial settlements than was the case in the mid-1980s. At that time, a random survey of 100 files and a smaller number of property judgements in the Melbourne Registry revealed no hint of an equation which included a quantification of a share of superannuation (ALRC 1987). Most forms listing assets had nothing against superannuation; those which indicated that there was superannuation did not usually give a value. In the majority of cases in another survey of divorced men and women (68 per cent of younger couples divorced and 54 per cent of older couples) superannuation played no part in property division (McDonald 1986). The survey of property judgements showed that superannuation was largely 'notional' even in cases where values were declared and were substantial. One such had an estimated value of \$250,000 after a marriage of long duration, with the couple in their mid-50s.

Joshi (1992) reviews the access of women to superannuation in various European countries and finds a mixed picture. Where the state offers broad coverage (sometimes, as in France, Sweden and Germany, crediting the mother/wife directly) and matrimonial property is deemed to be communal, superannua-

tion is shared automatically and fairly on divorce.

No such easy or fair distribution is available in countries like Britain or Australia. Joshi (1992) argues that as the family evolves from a functional basis in the strict division of paid and unpaid

work – and an assumption, albeit imperfect as McLelland and McDonald (1995) point out, of shared income over the life time – the state seems better fitted than the market to help sustain the family. In other words, Joshi sees the need for state intervention in achieving a fair distribution of earnings across the life-course, including superannuation. Mothers, she proposes, need support from both the family and the state to protect them from the market penalties of raising the next generation, such as those which derive from ending up with too few superannuation credits.

Family law cannot be asked to remedy labour force and remuneration inequalities; however, further work is required on this issue to remedy the unequal division of deferred earnings which accrue during the marriage and to achieve a fairer distribution of the hardship of divorce both at that point in time and in the future. Although reforms relating to superannuation have not been included in the Family Law Reform Bill No 2, it is to be hoped that this does not indicate that the matter has been dropped. As Joshi (1992) maintains, countries which penalise parents for their unpaid work send strong messages about the value of children in that

### **Gender and poverty**

McLelland and McDonald (1995) point out structural features of the feminisation of poverty. The details trip off the tongue, and like any litany, may sound banal. It remains salutary, however, that in spite of the efforts for equal pay and equal opportunity in education and employment, sole mothers risk poverty both on pensions and in the workforce. A study conducted by the Australian Institute of Family Studies (Funder, Harrison and Weston 1993) endorsed the general findings on poverty of sole mothers; since few could earn their way to genuine self sufficiency, sole mothers, whether employed or not, were often at risk of poverty.

The sole mother's case illustrates general findings on the opportunity costs of children (Beggs and Chapman 1988). Women's earnings are affected by education and previous occupational status (the structural features referred to by McLelland and McDonald), by the present dependency needs of children and by past adjustments of their paid work to rear children. Interruptions to paid work accounted for up to 30 per cent loss of income when compared with other sole mothers post-divorce (Funder 1986).

parents, employed full-time, on the minimum wage rates. These families were nevertheless unable to broach the barriers to being housed. If minimum wages for two-parent, dual-employed households is insufficient to ensure housing for the family then the wages issue cannot be seen as just as a 'women's issue'. Nor can it be confined to a somewhat marginalised group such as 'sole mothers'. It is a key concern for the heartland of working Australia. Although the base hourly wage rates are not as low in Australia as in the United States (Gregory 1995), we cannot afford complacency.

### **Superannuation**

Access to superannuation – a particular work-related benefit expressed in deferred earnings – is tied to years in continuous, paid employment. Lack of superannuation carries risks of poverty in old age (Rosenmann and Winocour 1989) – a risk much higher for women than men, and higher for single women than for married women. The latter (if the marriage lasts) share the benefit of their husband's earning stream over the life time. Sole mothers, with interrupted work histories and an over-representation in casual work,

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society. One way and another children receive those messages and learn from them. The issue of transmitting such values will be taken up later.

### Housing

McLelland and McDonald's (1995) quotes from low income people about housing are eloquent testimony to the psychological and social meanings beyond the need for shelter. As houses are the hub of property in family law, family lawyers are no doubt alert to the many meanings of the matrimonial home. They may not be aware of some of the links between housing and economic self sufficiency.

Housing tenure has been shown to affect other aspects of standard of living in ways which offer promise for poor people. In the heady 1980s in Victoria, the government instituted a Capital Indexed Low Income Loan Scheme and an evaluation of the scheme based on the random allocation of cases off a waiting list. Thus the impact of poor people moving from renter to mortgagor/owner could be evaluated.

Wulff (1988) documents the salutary effects of making low income people home buyers. A key (and unintended) outcome of the change of status from renter to home buyer was that people randomly selected from a waiting list to become home owners were much more likely to become employed if they had been out of the workforce, and to stay employed if they had already been so than were the matched comparisons who remained on the waiting list.

Thus it seems that when home ownership is secure and affordable it facilitates people's entry into employment or assists them to remain employed. In other words, home ownership in Australia is an integral part of the secure base from which poor people, including sole mothers, can move to self-sufficiency. Sadly, the scheme is no more. It offered a creative solution in which public intervention might be linked with private divorce settlements to finance housing.

### Relative Poverty Revisited

Thus far, the relative nature of poverty has been discussed in terms of groups within the society – the haves and the have-nots, men and women, sole parents and couple parents. The emphasis has been on adults, although the poverty of children is implied. I would like to take this as a point of departure and extend the notion of relative poverty into the microcosm of the family, and in particular the family as it makes the transition through divorce. In doing so, I refer to Susan Moller Okin (1989) as a guide.

Okin, a political philosopher, examines family roles in the light of John Rawls' (1971) theory of justice. Her argument is that Rawls' veil when lifted would reveal the family to be a crucible of injustice. 'The family', Okin says, 'is often a school of day-to-day injustice'. In addition she notes that if children learn about the nature of a just world from within families – exactly as they learn about other aspects of their milieu – then the models of distribution of goods and work they derive from their parents under current conditions

are grossly unfair. Okin proceeds to argue that the values placed on the work of men and women, and the distribution of hardship in families, is biased against women. Since children generalise learned models of justice they recreate their world in that form.

I would like to extend this argument to children of divorce and to illustrate it with comments from children between the ages of 10 and 22 who were part of a study conducted by the Australian Institute of Family Studies (Funder forthcoming). This study was not of particularly conflicted families, or damaged people; it drew on the experiences of 105 children whose parents had separated about six years previously.

Some of our interviews with children give vivid expression to the keen observations of children on the justice of the division of responsibility for their support:

*'Dad never pays anything. Mum hates it. Mum talks about it. She says we are his kids and "R" and "C" [stepchildren] are not. He pays more for them. He bought them a computer. I'll never have anything like that.'*

This boy of ten years, whose parents separated when he was two years old, shows a keen sense of unfairness of the distribution of goods among the children for whom his father is responsible. He is also aware of the reverberations of this situation which are still with his mother eight years after separation. Thus perceived unfairness is amplified in the child's mind by the resentment between the parents.

A girl of 13 years, whose parent separated when she was seven years old, is a close observer of how her financial support is managed by her parents. For her the balance clearly seems right:

*'Um – well, Dad pays for all my schooling and my food when I'm there. Mum pays for my food and clothes and Dad pays for some clothes. It's all just all divided up good. And Mum pays for Medicare and that – whatever it is. Whatever they have to pay for me – doctors bills, dentists bills . . .'*

Not just money enters the child's view of the equation of justice. This boy of 11 years,



whose parents separated when he was five years old, comments on the basic economics of caring work and paid work:

*'The money Dad pays for us is important. I think Mum couldn't look after us by herself. She couldn't make enough money without losing time with us.'*

A bitter note creeps into the assessment of an older boy of 16 years. His words are also a keen demonstration of Okin's thesis that children will carry forward standards observed in the family. The boy's words also present a child's commentary on the clean break doctrine in family law:

*'Dad has made a fresh start. He lives in [a middle class suburb] and we moved up here [outer rim]. His house is expensive and everything. Because Dad wants to see us all the time, Mum has to pay half the fares . . . he should pay both ways. He only pays \$45 maintenance for each of us. [Why should he pay more?] Because me and my brother have inherited his expensive tastes—ba-ba-ba . . .'*

Another teenage boy carefully assesses the balance of payments and reflects that the scales are tipped:

*'I think it was unfair before Mum got married again. I thought Dad was paying too much . . . and she was going to school again and she never got a part-time job or anything like that, and it was a bit unfair to Dad to sort of be supporting us. I reckon it was a bit unfair.'*

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In summary, the children speak to their keen observation of justice and injustice. They also record their hurt and anger at disparities between households, their critical analysis of parental manipulation, their expectation that parents contribute as they are able, and their resentment at preference for children in another household.

In Okin's terms, these children have learned from models not just of individual parent's behaviours, but from the system we tolerate on their behalf. The fact maintenance was not paid and was inadequate was not the responsibility of individuals alone, but of the pre-Child Support Scheme conditions. We need to look again at criticisms of the Child Support formula from the point of view of the children. McLelland and McDonald (1995)

propose that the formula not be eroded; the Australian Institute of Family Studies (Weston 1993) and the Department of Social Security (DSS 1994) have modelled the effects extensively and come to similar conclusions – that the transfers are generally effective and fair; that payments contribute a greater percentage rise in the standard of living for the child's household than they do a drop in the standard of living of the non-resident parent's household. This is particularly the case when the child is in a sole-parent household.

The Child Support Scheme and formula should be retained without major adjustments to quantum or to its cash basis. The Institute's submission to the Joint Select Committee (AIFS 1994) stated that the Scheme should have been made retrospective so that a whole generation of children could have moved to a shared parenting base. As Brennan (1995) recalls, retrospectivity only failed in the final phase of the Scheme's development, and then largely for reasons of political expedience. The Scheme should be retained so that justice be done now and as a powerful example of how good law addresses not only present concerns, but the implications that inequity has for the future of our society.

## Summary

There are two Family Law Reform Bills, one clearly identified as the 'Children's Bill' the other as the 'Property Bill'. Both property and poverty are children's issues, however. Valuing unpaid work properly at the rate of market work in marriages has symbolic significance for all family members. It is important to make explicit the principle that marriages are partnerships of equals and to signify this equality in the whole financial settlement. It is also important to attend to the true value and costs of children because appropriate financial settlements and child support will safeguard many children from immediate risk of poverty.

These principles are also required because children learn through the application of law their sense of relative deprivation, their sense of how much they can trust institutions, and what standards of fairness they should apply in their own lives. For our own sake and for the sake of children we should demand that standards for relativities in the macro world and in the family be applied with rigour.

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