

FAMILIES, POLITICS AND THE LAW: PERSPECTIVES FOR EAST AND WEST EUROPE. Mavis Maclean & Jacek Kurczewski, eds. Oxford, Clarendon Press, 1994. Pp. 326. (\$87.50).

Canadians are living through a period where an examination of the meanings and consequences of "privatization" is acutely needed. The welcome appearance of a comparative volume on the impact of privatization on the role of law in regulating the relationship among the state, the market and the family in the United Kingdom and Poland should stimulate analysis of parallel changes on our own side of the Atlantic. The juxtaposition of the privatization agenda of Thatcherite neo-liberalism against that of a society emerging from the authoritarian control of an all powerful socialist state tests the limits to which this term may accommodate very different phenomena. The authors are well aware of this fact. "In some Eastern European countries, notably Poland, state involvement is being reduced, but the resulting 'privatization' could also be described as desecularization."¹ In Western Europe, "rolling back" family law has meant leaving most matters for individuals to decide with a shift in emphasis towards "protecting the individual rights of vulnerable family members – women, children and the elderly. This development is sometimes described as 'privatization' of the family, and is welcomed by those who see the family as a source of moral values and social control, but feared by those who, often from a feminist perspective, see the family as a battleground where stronger members can dominate the weak."² The language of "weak" and "strong" is symptomatic of an outlook which looks to the state to "protect the weak and vulnerable" rather than redress the power inequities in the family system. It is a mark of an analytic framework which has incompletely digested the contribution of feminist theory to our understanding of the political questions bound up in family law.

The editors identify two central groups of questions raised by the "privatization" of the family addressed in this book. The first concerns the withdrawal by the state from the regulation of the family and the embracing of the value of individual liberty in Poland. This development has occurred at the same time as the apparent desecularization of the values and roles expected of and subscribed to by family members. In Poland, state withdrawal from the family has entailed weakening the norm of equality as a guiding principle of family regulation. In this context of "privatization", is there anything of value in the "exaggerated collectivism of the former Communist regimes?"³ Second, the editors contend that in the United Kingdom a government supported policy of individual liberty marked by state non-interference, coupled with an embracing of "traditional Victorian values based on patriarchy without interest in equality of outcome between those of different gender, class, or race"⁴ has characterized the state's position in relation to the family. Voicing concern for the interests of vulnerable family members, the editors query the value of freedom of choice in situations where economic bargaining power is unequal. At the same time, they ask what may be found "of value in the culture of opportunity, particularly at a time of recession and reduction in public-service provision?"⁵

¹ M. Maclean & J. Kurczewski, eds., *Families, Politics and the Law: Perspectives for East and West Europe* (Oxford: Clarendon Press, 1994) at 3.

² *Ibid.*

³ *Ibid.* at 4.

⁴ *Ibid.*

⁵ *Ibid.* at 5.

Oriented around an exploration of these broad themes and questions, *Families, Politics and the Law* is a collection of sixteen essays by Polish and British legal scholars, economists and sociologists who share an interest in the way in which law reflects and regulates the dynamic relationships among individuals, the family and the state. The volume is organized into four sections: "Concepts: Words and Values"; "Family Obligations: The Empirical Evidence"; "Families and the Role of Law" and "Family Law and Social Policy".

In part one, "Concepts, Words and Values", Jacek Kurczewski and Robert Dingwall detail the complex conceptual, ideological and institutional frameworks which organize social policy and legal developments concerning the family in Poland and the United Kingdom. Jacek Kurczewski, in "Privatizing the Polish Family after Communism" reviews the relationship between the family and state in the socialist period both in terms of legal norms and social reality. He continues with a discussion of the changes instituted with the demise of the socialist regime. As Kurczewski suggests:

The paradox of the Polish family is that the collectivistic Party-State introduced modern family legislation which in many aspects was ahead of the West. This legislation secularized marriage and individualized family relations but the family nevertheless survived due to the stress of the economic, political, and social conditions of real socialism. The new republic, based upon the principle of the rule of law, works to develop the individualistic market economy and institutionalize the safeguards of individual liberties. The family legislation, however, now opposes the privatization of family life making it dependent upon publicly recognized and supported corporations such as the church. The distinction between public and private was blurred under Communism; it seems that it is blurred in the new system as well.⁶

The condition of the family in Poland, as Kurczewski explains, is marked by a series of ironies. The progressive agenda of the socialist state was viewed with suspicion because it was imposed by an authoritarian regime. At the same time, the family became a centre of resistance to totalitarian power. In the new period, under the rubric of liberty and the rule of law, the family is reappropriated by another authoritarian institution – the Church.

In "Dilemmas of Family Policy in Liberal States" Robert Dingwall critiques Margaret Thatcher's attack on the welfare state and laments the adoption of the libertarian image of the relationship between family and state as the model for East Europeans to emulate. He cautions against reifying one version of the relationship between state and family in the liberal state as the only valid model. Dingwall reviews the historical development of family and state as boundaried spheres of separate value but asserts that the evolution of the contemporary state has sanctioned greater intervention in the family not only to sustain and protect its vulnerable members, but also to ensure the proper education and socialization of future citizens. His essay reminds us that while the values of individual liberty and freedom from state intervention or regulation may be central liberal precepts, protective social welfare policies can also be understood as the complete development of the liberal order. As the editors of the collection point out: "[w]e are basically a secular society, which has moved some way towards individualistic market-dominated rejection of communal responsibility for meeting the needs of vulnerable members. But our debates about reducing the commitments of the welfare

⁶ *Ibid.* at 51.

state are couched in the language of economics, not in the language of increasing personal liberty.”⁷ This should serve as a warning for Canadians subjected to similar processes in our federal social policy review and provincial budget cutting exercises.

It is unfortunate that a volume explicitly dedicated to investigating the impact of the rhetoric of privatization on the family did not review the extensive theoretical literature already accumulating on both sides of the Atlantic on the impact of the public/private distinction on gender equality. Indeed, one of the principal contributions of feminist legal scholarship and feminist social science has been to open up the “black box” of the family and to analyze the relationships of power and inequality engendered by the public/private distinction.⁸

In part two, “Family Obligations: The Empirical Evidence”, three essays investigate the underlying values informing public and private expectations regarding the obligations of family members vis-a-vis each other. In “Private Law and the Post-Totalitarian Family: Keeping Promises and Giving Help”, Iwona Jakubowska asks the question “why do family matters seem so very important in the context of totalitarianism?” One answer, she suggests, is that in a society marked by smothering state control and interference, where suspicion and distrust are pervasive, the family serves as a locus of socio-political opposition whose members can be trusted. In addition, the economic conditions of life in Poland—those of permanent scarcity and rationing—forced a system of interdependency or “mutual help” on (extended or more distant) family members. As outlined in “What do Family Members and Friends Expect from One Another at the Transition to Democracy” by Joanna Smigielska and Artur Czynczyk, members of Polish society were faced with permanent shortages of food, clothes, basic furniture, accommodation, child care, jobs and money. There developed from these material and economic conditions a practice and perhaps an expectation of familial interdependence and assistance which took a number of forms: queuing, the provision of accommodation or child care and financial assistance. Paradoxically then, as Smigielska and Czynczyk suggest, Polish family life “is both a reaction against attempts at the collectivization of the whole society, and also an efficient instrument in dealing with the everyday troubles of the family”⁹ [many of which have been created by that regime]. Each of the essays comes to interesting tentative conclusions from this particular experience of the family and the state. The former questions whether the transition to democracy and the rule of law might be made more difficult by the pervasive tendency to place trust in and assume obligations only for those persons with whom one has an intimate connection. Jakubowska points out that this would seem to undermine the legitimacy of a generalized regime of rights and the rule of law. The latter essay wonders whether individuals emerging from the forced interdependence of the socialist era might just want to be left alone.

⁷ *Ibid.* at 7.

⁸ The literature discussing and refuting this notion is voluminous. See e.g. F. Olsen, “The Family and the Market: A Study of Ideology and Legal Reform” (1983) 96 Harv. L. Rev. 1497; F. Olsen, “The Myth of State Intervention in the Family” (1984) 18 J. of Law Reform 835; N. Rose, “Beyond the Public/Private Division: Power and the Family” (1987) 14 J. of Law & Society 61; S.M. Okin, *Justice, Gender and the Family* (Boston: Basic Books, 1989); J. Ursel, *Private Lives, Public Policy: 100 Years of State Intervention in the Family* (Toronto: Women’s Press, 1992); M. Minow, “Beyond State Intervention in the Family: For Baby Jane Doe” (1985) 18:4 J. of Law Reform 933; D.L. Chambers, “The ‘Legalization’ of the Family: Toward a Policy of Supportive Neutrality” (1985) 18:4 J. of Law Reform 805.

⁹ *Ibid.* at 94.

The companion essay on the U.K. reflects the contrasting economic context of the British family. Janet Finch and Jennifer Mason in "Family Responsibilities and Inheritance in Great Britain" discuss how the family as a locus of property ownership may structure expectations about family obligations. The authors conducted a survey which left unresolved the question of whether testamentary freedom should be moderated by performance of family duties (*i.e.* whether legal notice should be taken of the care given to an aged or disabled parent). This suggests that British respondents are reluctant to tamper with individual rights even for the ostensible purpose of cementing family obligations. Evidently therefore, there is an important difference between the culture of obligation in Poland and the United Kingdom.

Part three, "Families and the Role of Law" is the lengthiest section of the collection. Eight essays canvass three separate broad topics: divorce, children and the law and women and the law. The legal relationship between the liberal state and the family has, in broad terms, been looked at as the construction of boundaries between public and private spheres.¹⁰ This entails not only a delineation of respective duties and obligations between the two, but also an articulation of the nature of the relationship between the state and family. There is both a normative and practical component to the establishment of separate spheres of regulation and responsibility as between the state and the family.

The socialist state refused to recognize a boundary between the public and the private. Nevertheless, there was a practical division of responsibilities without a formal delineation rooted in the rule of law. The socialist ethic of substantive equality was made to apply to the family also. Accordingly, the *Family and Guardianship Code* of socialist Poland was written in the language of equality and gender neutrality.¹¹ Compensating for the unequal burden of family responsibilities, the state adopted a series of social benefits directed at women. Yet, the practical division of family obligations sanctioned by social norms and judicial decision making often contradicted the principle of gender equality and undermined its incorporation as a social norm. The post-socialist period is characterized by efforts to dismantle the overlapping roles of state and family. The establishment of separate spheres rooted in law may make for a more rigid division of duties not only with respect to Poland's immediate past, but also in comparison with developed countries of the West.

As Malgorzata Fuszara discusses in "Does the Law Protect Polish Women?", in socialist Poland the norm of gender equality meant that women were expected to work outside the home not just out of economic necessity but as a matter of public duty. Absent a social ethic which reduced women's responsibilities within the home, employment did not engender greater equality or freedom, but on the contrary merely increased their burdens. "Securing work opportunities was not the only guarantee of women's rights. Sometimes the reverse was the case."¹² The state explicitly recognized that "women who are not employed nevertheless work at home for their families, that their work is socially useful and that for this reason they cannot be included in the category of social

¹⁰ See *supra* note 8.

¹¹ For a discussion of the substantive details of the Polish *Family and Guardianship Code* which entrench gender neutral norms see Chapter 7 "Allocating Resources at Times of Crisis: Divorce and Separation in Poland" by Andrzej Szlezak and Chapter 13 "Does the Law Protect Polish Women?" by Malgorzata Fuszara.

¹² *Supra* note 1 at 241.

parasites.”¹³ Moreover, the specific benefits allotted to women – maternity leave, education benefits, leave to care for sick children and other family members – implicitly recognize the unequal division of labour within the family. However, these benefits, as Fuszara explains, were also provided to support the strong pronatalist policy of the state and to mask the shortage of employment possibilities in socialist Poland.

It is not surprising to learn from an examination of Polish divorce cases that “all of the duties aimed at preserving the [matrimonial] union are imposed on [the wife].”¹⁴ The husband’s duties are defined negatively. He should not drink to excess, beat his wife or children or be verbally abusive. The wife, on the other hand, has a panoply of positive duties. She is expected to cook, wash clothes, tidy the flat, as well as satisfy her husband’s emotional needs. The only positive duties devolving on the husband are to provide for his own subsistence along with a *portion* of that of the children and to live in the family home.¹⁵ While the *Family and Guardianship Code* provides for divorce in the event of the “complete and permanent”¹⁶ breakdown of the marriage, the burden of keeping the family intact devolves entirely on women. Men are simply obliged not to destroy it by violence or absence. In short, the former socialist state was far from the ideal of providing gender equality in the family.

In the post-socialist period, the rights of women are threatened from more than one direction. The abandonment of any state commitment to substantive equality as well as the fiscal pressures on the state have eviscerated the social benefits with which women were once provided. The transition to a free market in the context of a severe economic crisis has, at the same time, restricted women’s employment possibilities. Many women now value the independence provided by an adequate income but this prospect is increasingly beyond reach. Finally, should the efforts of the Church to restructure family law in accordance with Catholic norms bear fruit¹⁷, then even the possibility of exit from an abusive marriage would be reduced.¹⁸ The sum of these effects would appear not only to reduce gender equality but much more pointedly to reduce the liberty of women without offsetting gains.

One important contribution of this volume is to highlight the operation of the public/private distinction in non-liberal Polish society. This distinction reasserts itself in communist societies because the state is either unable or unwilling to provide certain functions necessary for individual life. These “residuals” are left for families to contend with. So the family is not so much a sphere of freedom but one of necessary interdependence in what is largely a system of dependence – in the intimate sphere of the family individuals provide for each other what cannot be otherwise acquired. Yet to a Western feminist what is most striking about this story is that the burden of making up for the inadequacies of the state falls disproportionately on the shoulders of women.

¹³ *Ibid.*

¹⁴ *Ibid.* at 254.

¹⁵ *Ibid.*

¹⁶ *Ibid.* at 125.

¹⁷ As Andrzej Szczak notes, while the substantive law regulating divorce in Poland has not yet changed, divorce under the new regime has become more costly, lengthy and less accessible. *Ibid.*

¹⁸ As Malgorzata Fuszara documents, amongst petitioners for divorce, women are the majority. They seek divorce for what she calls traumatic reasons – where they can no longer endure the marriage because of their husband’s alcoholism or abuse. “Thus were the right to divorce limited, this would have a great effect on the women as the way out of their victimization would thus be barred or rendered more difficult.” *Ibid.* at 252.

The chapter by Robert Sobiech entitled "The Social Problem of Child Abuse in Poland: The Conflict Between Privacy and Control" illustrates the paradoxical impact of democratization on the rights of children. The legacy of the family as a centre of resistance against a totalitarian regime, together with the new-found democratic power through which to express the autonomy of the family from the state, deny legitimacy to state intervention in the family and screen activities within the family sphere from the state. As Sobiech points out, any concerted action against child abuse in Poland would require the recognition that corporal punishment and the other forms of aggression towards children are a problem deserving of social sanction.¹⁹ Not only would this require a change in social relations within the family, but to be effective, curtailing child abuse would involve surveillance of family relationships by the state. However, the social ethic of post-socialist Poland would resist such state scrutiny of family interaction. As Sobiech succinctly states: "we are confronted by a situation where the side-effect of devices once meant to defend society against a totalitarian system would spell the lack of social agreement to the effective protection of children's rights."²⁰ In this instance therefore, the establishment of barriers between public and private serve to push the interests of children beyond the reach of the state.

The vision of privatization currently projected in the West is primarily one of fiscal responsibility. The overriding value of public policy is one of balancing public accounts to the exclusion of any other public good. If individual responsibility and greater opportunity are invoked it is more by default than by inner conviction. This deficit driven agenda recreates a public/private distinction without rebuilding the norms of interdependence which once, however unjustly, governed relationships within the private family sphere. The result is a greater need for state surveillance and a continual requirement on the state to intervene – as in the case of child support – to ensure the proper performance of "private" responsibilities.

Mavis Maclean in "Delegalizing Child Support" addresses the new system for determining and enforcing child support obligations in Britain. This system de-judicializes by mandating an administrative agency to recoup the cost of raising children in one parent families from the other parent. To reduce uncertainty the agency calculates and assesses the costs of child support by reference to a fixed formula thereby eliminating judicial discretion (and the opportunity to bargain away these entitlements and responsibilities). Arguably, just at the point when East Europeans are moving to reduce administrative decision making and discretion in the name of privatization and the rule of law, British efforts at privatizing the cost of raising children in single parent households have moved in the opposite direction.

The impetus behind state intervention in the U.K. is intended to "redress the public consequences of private individual actions".²¹ Again, "public consequences" are narrowly interpreted to mean demands on the public purse rather than broader public policy concerns. Nevertheless, it is not quite correct to state as Mavis Maclean does that the state has withdrawn from setting the norms of marriage.²² The heated controversy over the status of same sex couples in Canada demonstrates the gap between status quo and

¹⁹ *Ibid.* at 174.

²⁰ *Ibid.* at 176-77.

²¹ *Ibid.* at 166.

²² *Ibid.*

laissez faire. The state in Britain simply chooses to ignore those who fall outside traditional norms.

The two chapters on the *Children Act* 1989 by Judith Masson²³ and Suzanne Gibson²⁴ respectively, demonstrate an important truth about the relationship of privatization to public policy. The state may take action to directly redress social inequities but this will normally entail both the establishment of an administrative apparatus and the development of administrative discretion in the implementation of policy. Conversely, if enforcement of public policy norms is delegated to private actors, surveillance mechanisms will have to be developed to ensure compliance since, absent an effective compliance strategy, the legislation of public norms delegated to private actors is simply a rhetorical exercise without substance. In the case of the *Children Act* 1989 Suzanne Gibson suggests the second approach was implemented in Britain. Masson avers that the reality is much closer to the latter.

Anne Bottomley in "Women, Family and Property: British Songs of Innocence and Experience" squarely addresses the myopic and substantially hypocritical vision which Thatcherite policies of privatization have inflicted on women. The rhetoric of individual responsibility is premised on an economic status of financial independence. That premise simply cannot be reconciled with the reality of familial property relations and gendered responsibilities within the home. Family responsibilities—precisely the theme which conservatives champion in order to lighten the public purse—trap many women in a situation which damages their earning capacity and hence their potential for self-sufficiency.

Privatization policies are paradoxical if not deliberately hypocritical with respect to the structural inequalities within the family. By drawing strict boundaries around property and guaranteeing the autonomy of the private sphere, conservatives claim to enhance independence and self-sufficiency. The same boundaries however, throw a veil over the gender relations operating in private. Divorce can place women in a position of bargaining over property from a standpoint of dependency—with predictable results. Legislation and the courts may readjust property relations upon divorce but this does not touch the underlying system of gender relations and may not be sufficient to ensure women's financial independence.²⁵ In Britain, community property (or some regime of equal sharing) is not the norm. The vulnerability in which this leaves many women upon marriage dissolution is therefore obvious. Yet even in Canada, where equal sharing is an established principle, the disadvantages of women upon divorce have not been resolved. This propels courts to continually seek new forms of property (such as pensions and professional degrees) to apportion, in order to provide for previously

²³ Chapter 11, "Implementing the *Children Act* 1989: The Changing Relationship between Local and Central Government". *Ibid.* at 189.

²⁴ Chapter 12, "Social Work, Law-Jobs, and the Form of Modern Law: The *Children Act* 1989". *Ibid.* at 213.

²⁵ Family law, the organization of the labour force, expectations about domestic duties, subservience and child care all result in women's poor economic condition. Therefore, developments in family law have a limited ability to address women's poverty on separation, especially in light of the low income level of many ex-husbands. It is only by dismantling the public/private distinction that these systemic issues can be redressed. A. Diduck & H. Orton, "Equality and Support for Spouses" (1994) 57:5 Mod. Law Rev. 681.

dependent spouses. To put it bluntly, the guarantee of property rights alone does not deliver economic sufficiency.²⁶

Bottomley suggests that we look more closely at the behaviour and expectations of couples during their period of cohabitation rather than at the time of dissolution in order to ascertain a more realistic picture of gender relations in the family. She does not imply that this approach will automatically yield solutions. Rather, it is her view that the problems of unequal economic status at separation are rooted in the gender relationships that operate throughout the period of cohabitation and cannot be magically resolved by choosing the right formula for property division.

Juxtaposed against the Polish experience where private property played a relatively minor role in divorce cases in the socialist past, we can gain some perspective on the ways in which the economic system conditions the development of family law. This is so despite the fact that in most divorces, even in the West, there is little property to divide.

In part four of this collection, "Family Law and Social Policy", the authors investigate some of the limitations and implications of the effects of "privatization" as it has been implemented in each of the two countries. In "Marriage, Motherhood, and Old-Age Security in the UK" by Heather Joshi and in Martin Richards' "Divorcing Children: Roles for Parents and the State", the authors discuss some of the public consequences of the decision to divorce. Joshi discusses marriage as a system of old age security for women and the role of pensions within it. Women who stayed at home to take care of children and other dependents and who looked forward to retirement income calculated on the basis of a family wage earned by a male breadwinner have been unjustly disadvantaged by a system which has moved to a system of individual entitlement through work. Elderly women have no chance to take advantage of improved employment opportunities for women, yet the state which increasingly seeks to shift the burden of social insurance back onto the family is both unmindful of and unwilling to take account of the frustrated expectations of this group, whose welfare may be devastated by the consequences of marriage dissolution.

Richards argues "that parental divorce often damages the life chances of children and the state could, and should, act more firmly to head off some of this damage."²⁷ While acknowledging that in most industrialized countries the state does act upon marriage breakdown to ensure that decisions are made in the best interests of the child, he argues that state policies concerning the well being of children post-divorce are "usually more concerned at reducing government spending, whether on the judicial system or on direct or indirect support for post-divorce households with children."²⁸ Both chapters seem to suggest that the policy of "privatization" in the U.K. is one which favours state intervention when private decisions have public economic consequences. Privatization, according to this model, is less a normative vision about the best circumstances within which to promote individual flourishing and respect intimate relationships, than an attitude about reducing state expenditures and shifting financial burdens from the state budget to individual actors.

²⁶ It is ironic that the leading case on spousal support in Canada, *Moge v. Moge* [1992] 3 S.C.R. 813, [1993] 1 W.W.R. 481, concerns a couple who were married in Poland. The Supreme Court of Canada recognized that the reality of gender relations in the family does not always favour a "clean break"; nor is it always possible for a divorced woman to become economically self-sufficient.

²⁷ *Ibid.* at 305.

²⁸ *Ibid.*

Finally, in Poland where the aspiration is one of individual liberty, the old *Family Law and Guardianship Code* of the socialist regime, which in principle, is based on a norm of equality, is likely to be altered in accordance with the values of the Catholic Church. Likewise, the social benefits structure has been altered to reduce the provision of such benefits. In her article "Family Benefits and Social Policy in Poland", Beata Laciak documents the recent demise of family support benefits which had been implemented during the socialist era. Since 1989 Polish families have faced the erosion of such benefits as supplements for crèches, accommodation and factory canteens and for education, maternity and child care leave. This new trend in social policy has been undertaken, we are told, because of the bleak economic circumstances but also "as the Under-Secretary of State in the Ministry of Labour and Social Matters stated, 'once, we were all recipients of welfare. Today, the taxes a citizen pays entitle him to certain social benefits but he should first look after himself'".²⁹ Moreover, it is stated that the new social policy in relation to the family "will create the basis for individual enterprise, free choice, action, and responsibility of the family".³⁰ The day to day social reality which confronts most Polish families and individuals, however, does not match freedom with opportunity. Bleak employment prospects, especially for women, discourage them from seeking even those benefits to which they are formally entitled. Still, the author suggests that there is a lingering culture of dependency in which Polish citizens continue to expect their needs to be provided for by the state rather than provide for themselves.

To this reviewer, the answers to the questions raised in the introductory essay concerning the consequences of privatization appear to be largely negative. None of the essays in the social policy section points to any dramatic gains in individual liberty as a result of the reforms. If any improvement in the "culture of opportunity" is evident, it has not been noted in this volume. If there was something of value in the "exaggerated collectivism" of the former communist regimes such as crèches, extended maternity leave, educational leave for women, these services (inadequate as they were), have been jettisoned or abandoned in the headlong rush into the market.

While privatization in Britain and other Western countries does entail a withdrawal of state funding for welfare activities, there is no evidence of any concomitant improvement in the family as a system of interdependence or dramatic enhancement of individual liberty. Instead, a portion of the former welfare budget is now diverted to surveillance activities to ensure that individuals live up to state enforced family obligations. This development seems to diminish liberty with little visible gain to equality. In Poland and other East European countries the conjunction of the rhetoric of individual liberty with the dismantling of social benefits is not likely to increase family solidarity whatever the Church may preach. The reluctance of women to claim maternity leave out of a fear of losing scarce employment demonstrates that an economically pressed pregnant woman will more likely seek a (newly) illegal abortion rather than trust to the vagaries of the extended family and Church.

One truly sobering conclusion which may be drawn from this book is that a strategy of gender equality which depends on the provision of state services is fraught with the danger of policy reversal that may leave women even worse off than before. Among the aspects of the "culture of opportunity" that privatization does *not* seem to provide is a context for policy innovation enhancing women's equality and individual autonomy.

²⁹ *Ibid.* at 286.

³⁰ Program Rządowy, "Government Program: Social Security of Citizens" (1991), cited in *ibid.*

The alternative modernist dreams of social ordering and individual fulfilment provided by liberalism and socialism have failed. That both systems of social regulation call upon the family to mediate their failures usually means that women end up performing unremunerated labour. The persistence of a public/private distinction under both regimes points to its location not solely as a creation of liberalism but to its roots in sexism, in the relation of gender to the state. As the comparative experience of Poland and the U.K. fully reveals, the inability of the state to extricate itself from intervention in the family is indicative of the public roles expected of family institutions. The so-called "retreat" into the private by concerted state action unmasks the effort by the state to force the family to meet public policy goals.³¹ The savings achieved by tinkering with the boundaries of public and private are paid for by the cost to liberty and equality.

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³¹ Mary Jane Mossman argues that it would be better to jettison the public/private distinction in favour of an explicit recognition of the public policy roles played by the family. See M. J. Mossman, "Running Hard to Stand Still: The Paradox of Family Law Reform" (1994) 17:1 Dalhousie L.J. 5.

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