Changing attitudes to property distribution and family law since the passage of the Australian Family Law Act, 1975

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> The function of the Women's Court is to give women whatever they want, no questions asked…[It] is a bastion in the general war that women have waged against men for three decades…[the] chief upholder of long-outmoded feminist views…No loving or hardworking or loyal father has a chance of even an existence here, for his family's turned into a stereotype rubber-stamped by feminist propaganda. All this heavy gas hangs over from the hysterical heyday of feminism in the mid 1970s. While the unreason of that historical moment is clearing elsewhere, it is preserved in the Women's Court.[1]

The notion of the Family Court of Australia as a feminist bastion is widely held, despite the fact that there is little evidence of feminist involvement in its introduction and even less enthusiasm amongst feminist scholars to claim the Family Law Act as one of the movement's early achievements. In a recent article Ann Genovese has argued that, to the contrary, such claims are part of an anti-feminist discourse which sets out to show that the movement's successes were all achieved at the expense of men.[2] The resolution this debate lies in an examination the origins and impact of the Family Law Act, in order to explain why men have replaced women as the imagined victims of divorce in discussion surrounding family breakdown today.

When the Family Law Bill made its tortuous passage through the Australian Parliament over the years 1973 to 1975, the feminist movement was at its height. Both the Women's Liberation Movement, which emerged in 1969, and the Women's Electoral Lobby, founded in Melbourne in 1972, took a pro-active political role, compelling politicians to consider the gendered impact of the legislation they were considering. However, neither group was prominent in the early campaign for divorce law reform. The Family Law Bill is better understood as a response to changes in the post-war gender order evident in, and produced by, higher levels of educational achievement amongst women, greater participation in the workforce and the increased availability of reliable and accessible birth control, all factors which were more productive of feminism than resulting from it. A general dis-ease about the future of marriage and the family, increasingly acute from the late 1960s, was evidence that that these changes were having a major impact.[3]

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[1] Sharyn Stevens, *I Run on Money* (2006 [cited 20 November 2006 2006]); available from http://melbourne.indymedia.org/news/2006/08/118738.php.

[2] Ann Genovese, "Family Histories. John Hirst V. Feminism, in the Family Court of Australia," *Australian Feminist Studies* 21, no. 50 (2006): 176.

[3] Michael Gilding, *The Making and Breaking of the Australian Family* (Sydney: Allen & Unwin, 1991), 122. Miriam Dixson, *The Real Matilda: Woman and Identity in Australia 1788 to the Present*, 3 ed.

Although Norman Mackenzie's 1974 analysis of the place of women in Australia harks back to an older time, the language and punctuation suggests an awareness that the situation was about to change:

> It is…taken for granted that women are home-centred, and that there is something odd and rather undesirable about a woman who is making a career, or is active in public life outside the range of socially-approved types of women's work and women's interests. The 'normal' woman is expected to conform to the stereotype of femininity, seeking her satisfactions in house-pride and the care of husband and children, finding her relaxation in card-parties, tennis or bowls, entertaining friends and relatives, tending the garden and watching television.[4]

Articles published in the *Australian Women's Weekly* in the early 1970s began to ask whether marriage had outlived its usefulness.[5] Sociologist, Lyn Richards, sensed a similar change, suggesting that the post-war changes introduced 'different *ways* of having families...encouraged questioning of traditional values, especially about women's roles' and exposed a 'diversity of family forms and values'.[6] 'Inhibited people desperate to live life with excitement and passion,' Janet McCalman has argued, were 'applying new roles to replace old ones'.[7] Such changes, however, involved a reinvention rather than an abandonment of marriage as an American article reprinted in the *Weekly* made clear:

> Marriage is becoming **more** interesting, not less. In the first place, divorce has made it possible for people to work at improving their marriages by ending what used to be a life sentence of discontent and bickering when the marriage was a hopeless proposition in the first place. In the second place, premarital sexual experience is now so widespread and culturally acceptable that people are no longer obliged to marry for sex, or to begin their relationship together with the tricky necessity for sexual initiation or in complete ignorance of their sexual compatibility. Liberation…has made marriage a creative and vital institution of great potential and excitement, rather than ending it.[8]

In this environment of change the 1959 Matrimonial Causes Act, with its association with seedy private detectives, manufactured evidence, and salaciously reported court hearings came to be seen as an embarrassment.[9] During 1972 the Senate Standing Committee on Constitutional and Legal Affairs recommended needed reforms and the Labor

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(Melbourne: Penguin, 1994), 222. P McDonald, *Can the Family Survive?* (Discussion Paper No 11, Australian Institute of Family Studies, 1984).

[4] Sol Encel, Norman MacKenzie and Margaret Tebbutt, *Women and Society: An Australian Study*, Melbourne: Cheshire, 1974, 41-2.

[5] Susan Sheridan, *Who Was That Woman? The Australian Women's Weekly in the Postwar Years* (Sydney: University of NSW Press, 2002), 38.

[6] Lyn Richards, *Having Families: Marriage, Parenthood and Social Pressure in Australia*, Revised edition ed. (Melbourne: Penguin, 1985), xvii.

[7] Janet McCalman, *Journeyings: The Biography of a Middle-Class Generation 1920-1990* (Melbourne: Melbourne University Press, 1993), 251.

[8] Michael Korda, "Love & Marriage 1974 Style," *Australian Women's Weekly*, October 23 1974.

[9] Alastair Nicholson and Margaret Harrison, "Family Law and the Family Court of Australia: Experiences of the First 25 Years," *Melbourne University Law Review* 24, no. 3 (2000): 763-4, Leonie Star, *Counsel of Perfection: The Family Court of Australia* (Melbourne: Oxford University Press, 1996), 57-8.

Government, elected later in that year, included in its 'It's Time' platform a commitment to reform the 'laws on divorce and other social issues…in the light of modern sociology and standards'.[10] In implementing this change the new Attorney-General, Lionel Murphy was influenced by two key pressure groups. The first was the legal profession, aware of both the discontents arising from the existing Act, and of the increasing popularity of the provision it contained allowing for divorce after a five year separation.[11] Fiercely resisting Murphy's early attempts to reform divorce practice by altering the Matrimonial Causes Act rules, the profession was keen to retain a key role in the management of marriage breakdown.[12]

The second influential group was the Divorce Law Reform Association (DLRA), the state branches of which, diverse in many ways, were united by a desire to remove divorce from the grasp of 'greedy lawyers'. Although the DLRA had both male and female members, in its literature the imagined cause of divorce was almost always the behaviour of the woman, and its victim the hapless male.[13] The Victorian branch of the Association blamed the injustices of the present law for turning young people away from marriage, and recommended the introduction of no-fault divorce, on the basis of a single ground of one year's separation, with no automatic right to maintenance on either side, and custody of the children to be awarded to the parent with the 'more mature and balanced personality' as judged by Child Custody Advisory panels in which lawyers would play no part.[14] DLRA Queensland president, Ron Downs, argued that anyone who was licensed to celebrate marriage should also be able to arrange a divorce, claiming that the Association's use of such mediation had seen all but 2% cases settled outside the court.[15] The rising divorce rate, he believed, was caused by the operations of the existing act, which allowed lawyers to profit from family misfortune and put 'pressures on people to do the wrong thing…The incentives should be to create opportunity so that marriage can succeed and not make the reward for failure a pension for life. Once it is made difficult to gain financially from marriage breakdown more thought will be given to encourage its success.'[16] In South Australia, state branch president George Romeyko, kept up a steady barrage of publications addressed to the 'maintenance slaves or fugitives' which, he asserted, were created by the current law. Their fate, he argued, was decided by elderly judges, espousing outdated values. 'Those people represent the UPPER CRUST,' and, he believed, were unduly gallant to undeserving women, represented as grasping, a drain on the assets of both their former husbands and the State. In an article entitled 'Pussy Gold' Romeyko wrote 'a woman sits on her fortune' citing as evidence the $36 weekly social security benefit available to separated mothers:

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[10] Star, *Counsel of Perfection*, 59.
[11] Ibid., 68-9.
[12] National Archives of Australia, M132, Divorce 1973. This dispute is more fully discussed in Jenny Hocking, *Lionel Murphy: A Political Biography* (Cambridge: Cambridge University Press, 1997), 157-9.
[13] DLRA (Qld), Newsletter no 7, July 1973, thanks one of these female members for kindly offering to make the curtains for the Association's offices. NAA M132/1 Divorce Law Reform Association 1973-4.
[14] Divorce Law Reform Association (Victorian Branch), Proposals for Reform of Family Law in Australia, 1973, National Archives of Australia, M132, Family Law Bill [II], 1973-5.
[15] .R.Yuill to the Attorney General 9.4.74, setting out a suggestion from the DLRA (Qld) president, Ron Downs,
[16] R.D.Downs to Yuill, 17 April 1974, NAA M132/1 Divorce Law Reform Association 1973-4.

> It takes $26,742 invested at 7% to produce $36.00 weekly. So handle that bottom with respect. On top of all that, while a money investment loses value with inflation, the female bottom is an asset that appreciates – the latest budget raises the pension by $1.50, plus 50c for the child, bringing the total to $38.00.[17]

The voice of feminism was muted in this debate. Where much of the DLRA material suggests a nostalgia for the traditional family in which male right was unquestioned, radical feminists were struggling to be free from such restrictions. 'Central to the liberation of women,' the emerging Women's Liberation Movement argued, 'is the provision of alternatives to the present pattern of child-bearing and housekeeping, which results in women bearing almost the entire responsibility for the socialization of children, and housework while men are forced to be "breadwinners"'. The movement called for both marriage and divorce to be overhauled, echoing the DLRA's calls for the single ground and the removal of lawyers from the divorce process.[18] However, although these demands were repeated in later manifestos, there is little evidence of Women's Liberation campaigning for legislative change.[19] In the agenda of the more pragmatic Women's Electoral Lobby (WEL), divorce was listed alongside jury duty as 'less urgent matters' overshadowed by campaigns around women's access to education, employment, child care and abortion.[20] It was only after the Bill was introduced that WEL became actively involved, accepting the key principles of the legislation but campaigning to have 'provisions on property division and child maintenance interpreted in a way that gave proper recognition to women's economic contribution and to the real cost of maintaining children.'[21] It is this intervention to which most feminist scholars refer when they argue for the women's movement being influential in divorce law reform.[22]

The Family Law Bill was introduced in the Senate on December 13, 1973. The decision by both major parties to allow a conscience vote produced a lengthy debate, conducted initially in the Senate and, from November 28, 1974, in the House of Representatives, and mirrored by a parallel debate amongst groups in the community anxious to influence the shape of the proposed reform. Despite its very different genealogy the Bill quickly became associated with other Labor Government reforms such as funding for women's refuges, provision of child care and, later, anti-discrimination legislation, which were

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[17] George Romeyko, 'Australian Divorce Law Reform: Maintenance Slaves Arise – You Have Nothing to Lose but Your Chains' September Newsletter 1973, NAA, M3865 Family Law, 1973-80. For a similar condemnation of the gallantry of judges see: Notice to members DLRA (NSW), January 1974, NAA M132/1 Divorce Law Reform Association 1973-4.

[18] D. Olive, 'Work – Women – Liberation (Some views of the Working Women's Group Women's Liberation)', NAA A6122 Women's Liberation Movement, Victoria Volume 1, 1970-1.

[19] NAA A6122 Women's Liberation Movement, Victoria Volume 3, 1972. For a contemporary perception of WLM's involvement see Henry Finlay, "Judiciable Issues and Legalism in the Law of Divorce," *Australian Law Journal* 46 (1972): 543.

[20] Caroline Graham, "Time Bombs among the String Bag Set," *Australian*, 2 June 1972.

[21] Jocelynne Scutt, *Growing up Feminist Too: Raising Women. Raising Consciousness* (Melbourne: Artemis, 1996), 231.

[22] Marilyn Lake, *Getting Equal: The History of Australian Feminism* (Sydney: Allen and Unwin, 1999), 240-1. Jocelynne Scutt, *Growing up Feminist: The New Generation of Australian Women* (Melbourne: Artemis, 1996), 81.

more directly responsive to feminist demands, and hence implicated in the attack on the traditional family in which both Labor and feminism were supposedly engaged.[23] There was no doubt amongst any of the protagonists that gender relations in Australia were changing, but a clear divide developed between those who welcomed such changes and those who sought a return to the status quo. Senator John Button depicted the family as an institution under attack 'because of the pressures of urban life, the alienation of citizens one from another, and an inability to cope with the pressures and complexities of life generally' but argued that it could not be preserved by constraint.[24] To Senator James McClelland the rising divorce rate was evidence of an improvement in the situation of women:

> The real causes of the disintegration of marriage…are to be found in such things as increasing urbanization, increasing industrialization, greater social mobility, the emancipation of women, the weakening of religious sanctions and…the increased all-round prosperity…In a period of 2-income families, the woman who has just to grit her teeth and bear an intolerable marriage is…disappearing. There are still plenty of them around, but the social tendency is for bad marriages no longer to be prisons from which the spouses cannot escape.[25]

'The new found freedom of women,' Robert Whan argued, 'allows them to develop their God-given intellect and talents in a way they have never been able to develop them before,' but it also compelled the parliament 'to look very seriously at the whole structural relationships of our society'.[26] To Senator Don Grimes the legacy of such changes was more mixed, rendering marriage more stressful, but freeing women from the status of 'chattel'. More importantly, he argued, such changes were beyond parliamentary control: 'harsh, inequitable divorce laws, and a situation of warfare in law courts…will [not] do anything to strengthen the marriage bond'.[27] 'We are not here to make judgments,' concluded Kenneth Fry, 'we are here to legislate to see that our laws accommodate the changing attitudes and aspirations of our citizens'.[28]

By contrast, Senator Arthur Gietzelt saw the parliament as having a proactive role. While denying that the Bill would change the 'concept of marriage,' he celebrated what he saw as its central purpose 'to create more equality for married persons, more equality in human relationships and to put man and wife on an equal basis'.[29] Ian McPhee went further, expressing the hope that a more equal law, would usher in 'a new era of more stable marriages,' although observing 'the attitudes of men in particular - but some

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[23] For a discussion of a similar debate in relation to the Sec Discrimination Act see Patricia Grimshaw, Nell Musgrove and Shurlee Swain, 'The Australian Labour Movement, the Eight Hour Day and Working Mothers in the United Nations' Decade for Women, 1975 to 1985' *Labour History* (forthcoming).

[24] Commonwealth of Australia, *Parliamentary Debates, Senate, 1974*, vol. 62 (Canberra: Australian Government Printing Office, 1974), 2062.

[25] Ibid., 2046-7.

[26] Commonwealth of Australia, *Parliamentary Debates, House of Representatives, 1975*, vol. 93 (Canberra: Australian Government Printing Office, 1975), 178.

[27] Australia, *Parliamentary Debates, Senate, 1974*, 2156.

[28] Australia, *Parliamentary Debates, House of Representatives, 1975*, 1162.

[29] Australia, *Parliamentary Debates, Senate, 1974*, 2521, 18.

women also - will need to change before that eventuates'.[30] It was more common, however, for parliamentarians to call for a buttressing of the traditional family rather than an attempt to accommodate social change.[31] The role of the parliament, Senator Douglas Scott argued, was to resist rather than accept such 'revolutionary changes'. [32] In a speech which linked inflation, contraception and Communist China, Senator Glen Sheil condemned the emancipation of women, now free 'to philander in much the same way as men have been able to do always'.[33] The traditional family, Alan Jarman explained, was built upon gender difference. Male and female 'roles are complementary, not equal and interchangeable' and Parliament had a responsibility to ensure that such differences were preserved.[34] 'We should be directing our attention to the priceless place of a mother in the home,' Anthony Luchetti told his fellow members, 'assisting her to do the things that she should be doing as the queen of the household organizing and ordering the family life'.[35] The role of the Parliament, Stephen Lusher argued was to protect such women from the 'fundamental' changes which society was forcing upon them.[36]

The male victim, so central to DLRA campaigns for divorce reform, was thus displaced by the victim woman, with chivalrous parliamentarians leaping to her defence.[37] Wives who had devoted themselves to homemaking needed to be protected from being divorced against their will and from the expectations, embedded in the Bill, that they would support themselves and pay their own legal expenses. They also needed to be compensated for the inevitable loss of income and lifestyle which such provisions would entail.[38] The Bill, Francis Stewart argued, rendered spouses 'disposable at will' and deprived women of the 'protection and support to which they are entitled as wives and mothers of the future generation of Australians'.[39] It gave, Daniel McVeigh believed, 'an open cheque to the Casanovas and "tom-cats" in our society' downgrading discarded wives to 'a type of slavedom', making a wife 'a trophy to be put on the mantelpiece for 12 months rather than having her occupy the place she so thoroughly and richly deserves on the altar as God's greatest gift to man'.[40] 'It is not unreasonable to describe this as a man's Bill,' declared Leo McLeay, speaking in defence of the middle-aged wife whose husband had not allowed her to work. 'I have to put myself in that category,' he added. 'If I found a highly attractive young girl down the street and deserted my wife, under this

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[30] Australia, *Parliamentary Debates, House of Representatives, 1975*, 163.
[31] Australia, *Parliamentary Debates, Senate, 1974*, 2066.
[32] Ibid., 2512.
[33] Ibid., 2523. Senator Lawrie makes a similar point, 2529
[34] Australia, *Parliamentary Debates, House of Representatives, 1975*, 168.
[35] Ibid., 943.
[36] Commonwealth of Australia, *Parliamentary Debates, House of Representatives, 1975*, vol. 94 (Canberra: Australian Government Printing Office, 1975), 1379.
[37] There are only three direct references to the possibility that the proposed Bill would be unfair to men: Dr Gun, William Wentworth and **????** Fitzpatrick, Australia, *Parliamentary Debates, House of Representatives, 1975*, 174, 76-7, 916.
[38] This point is made by speakers on both sides of the debate. See for example: Senator Missen, Australia, *Parliamentary Debates, Senate, 1974*, 2038. Senator Baume, Australia, *Parliamentary Debates, Senate, 1974*, 2051. Kim Beazley, Australia, *Parliamentary Debates, House of Representatives, 1975*, 332.
[39] Australia, *Parliamentary Debates, House of Representatives, 1975*, 159-60.
[40] Ibid., 171-2.

legislation my wife would have to go out to work or prove to a court that she could not maintain herself adequately.'[41]

Given this situation, McLeay expressed surprise that women's groups appeared to be amongst the strongest supporters of the Bill.[42] His surprise was widely shared. 'We had a magnificent country,' Bob Katter added, 'until the media began extracting from some of these strange and odd countries new standards or substandards and we found many women's organizations beginning to espouse them'.[43] 'It is time these trendy women's groups had a good look at themselves,' said Paul Keating. 'It is curious that in the House of Representatives, where there is only one woman member, it falls to the lot of most male members of the House to protect women's rights against the wishes of many women's organizations.'[44] Yet such attacks on women's organizations were misplaced. The WEL submission on the Family Law Bill had also argued for the need to make special provisions for the traditional wife and mother. However, it saw such special arrangements as transitional and looked forward to a time when women would occupy a more equal position in society rendering such provisions redundant.[45] 'Waving the women's lib banner,' Senator Jean Meltzer defended women against the DLRA representation of them as 'neurotic…greedy and…vindictive…grabbing the assets of the marriage'. 'Every chance must be taken to make sure that we are safeguarding these people until they can care for themselves…Although our society is changing, the cry of women's lib is not an excuse for bypassing social and economic justice.'[46] 'This sort of Bill,' Senator Kathy Martin argued, 'can only reflect the status of women in Australia today… Australian women are not equal,' and until that fundamental inequality was corrected, special provisions would be needed.[47] The notion that recent social changes had rendered such special provisions unnecessary was more likely to be advanced by supporters of the DLRA agenda than by speakers of a feminist bent.[48]

Parliamentarians' speeches were both informed by and reflective of ongoing public debates. Although polls indicated that public opinion was clearly, and increasingly, in favour of the new legislation the churches approached the legislation with some caution.[49] Distaste with the existing practice had led many to support calls for change but the elements within the proposed legislation that appeared to alter the nature of marriage caused some anxiety.[50] The Bill, such critics argued, redefined marriage as a temporary consensual contract instead of a life-long commitment.[51] 'Happily married women are not immune,' an article in the Melbourne Catholic newspaper, the *Advocate*, observed:

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[41] Australia, *Parliamentary Debates, House of Representatives, 1975*, 1374-5.
[42] Ibid., 1374.
[43] Ibid., 1391.
[44] Ibid., 1388. The sole female member was the Victorian Joan Child.
[45] Women's Electoral Lobby, Submission re Family Law Bill, c.1973, National Archives of Australia, M132, Family Law Bill [II], 1973-5.
[46] Australia, *Parliamentary Debates, Senate, 1974*, 2040-1.
[47] Ibid., 2499, 502.
[48] See for example Innes: Australia, *Parliamentary Debates, House of Representatives, 1975*, 907-9.
[49] Hocking, *Lionel Murphy*, 216.
[50] "Bishops on Divorce," *See*, December 1973.
[51] NAA M132 Divorce 1973.

> Because they understand the true value of marriage, they will be affected by its downgrading. They will suffer extreme pressure in transmitting their own concept of marriage to their children. In fact they will have little hope of doing so, because the law will support trial marriage.[52]

'No fault,' prominent Sydney Methodist clergyman, the Rev Alan Walker argued, would threaten the basis of the family if it was interpreted to mean 'no responsibility'.[53] The views of the churches were echoed in the deluge of letters which all sitting members received. 'Good divorce law,' it was agreed, 'should aim at buttressing marriage not undermining its stability.'[54]

In this campaign feminism was again identified as the source of the contested changes. 'Women's "libbers" are sounding their message loud and clear,' an article in the Melbourne Anglican newspaper declared. 'Are women who stay at home doing likewise?'[55] The feminist message, 'their right to be considered of equal status and potential in the eyes of society'[56] might seem uncontroversial but, as feminist Anne Summers pointed out, it was an older version of family that the churches were defending, a family characterized by 'a sexual division of labour and the differences in opportunities and status this entails, the very situation which is causing women so much discontent'.[57] However, such discontented women were also critical of the Bill. It was framed, feminists argued, 'in relation to an ideology of equality not in relation to existing social realities' and hence offered only 'a hollow equality'.[58] Nor were the members of the DLRA pleased with the nature of the proposed reform. It left divorce in the realm of the judges: 'men, who traditionally espouse anti-Labour ideology, lean backwards to be gallant, are subject to indigestion and possibly stomach ulcers and whether they wear a wig or not are seen to close their eyes…while on the job'.[59] The clause recognizing the contribution made by the homemaker/parent drew no distinction between the 'thrifty' and the 'spendthrift' wife, and the assurance that costs would only be awarded when 'special circumstances' applied was no reassurance at all.[60] 'As "special circumstances" (2 tits and a skirt?) exist in every case,' Romeyko wrote, 'men will continue to pay.'[61]

Thirty years after the passage of the Act there are elements of this debate which now seem quaint, but others have a disturbing resonance. The changes in the gender order which had caused so much alarm were relatively unaffected by the legislation. Rates of employment amongst married women continued to increase, further isolating those who

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[52] Leola Young, "All Women Have Rights," *Advocate*, March 1975.
[53] Rev Alan Walker, 'Divorce for the asking' *Age*, 28 October 1974
[54] A cluster of such letters from the Sydney suburb of Roseville is available in NAA M132 Divorce 1973.
[55] Dorothy Hall, "Don't Leave It All to Women's Lib!," *See*, November 1973.
[56] Ibid.
[57] Anne Summers, *Damned Whores and God's Police*, Revised ed. (Melbourne: Penguin, 1994), 479-80.
[58] Margaret Hogg and Anne-Marie Lanteri, "Women and the Law," in *The Other Half: Women in Australian Society*, ed. Jan Mercer (Harmondsworth: Penguin, 1975), 110, 13.
[59] Notice to members DLRA (NSW), January 1974, NAA M132/1 Divorce Law Reform Association 1973-4.
[60] Response by Attorney-General's Department to criticisms from DLRA (NSW), NAA M132/1 Divorce Law Reform Association 1973-4.
[61] George Romeyko, 'Life long litigation under the proposed Family Law Bill', NAA M132/1 Divorce Law Reform Association 1973-4.

had chosen, and had the freedom to choose, to make a career of homemaking.[62] Increasing financial autonomy freed women to make other choices, including the choice to leave a marriage which was no longer satisfying.[63] In divorce proceedings, claims for spousal maintenance, so fiercely protected during the debate, have simply 'faded away'.[64] While such changes have been welcomed by the women's movement, they are more reflective of broader social and economic changes, than of the activities of the movement itself. Conservative groups, however, have continued to be critical of the legislation and, deprived of the figure of the victim wife, have forged an uneasy alliance with men's groups whose views echo many of those earlier advanced by the DLRA. This alliance has brought disaffected men's views into the mainstream, reshaping public opinion and increasing political impact as a result. [65]

A recent research project comparing judicial and popular understandings of the distribution of property after divorce illustrates the dimensions of this change.[66] Attitudes to property ownership, contribution and distribution after divorce were explored in a series of in-depth interviews conducted with 58 couples living in intact intimate relationships in suburban Melbourne. Irrespective of whether they were living in a married, de facto or same-sex relationship, the majority of the couples understood their relationship as a partnership in which the contributions were equal. All of the interviewees had been actively engaged in the workforce, but financial contributions to the partnership became less equal after the arrival of the first baby. As one father observed, 'the contribution…just changed. Instead of being a revenue stream, it's a contribution of labour or love or whatever you like to call it, something or other she's contributing. It's just in a different form.'[67] This understanding was shared by couples who replicated the traditional gendered division of labour and those who rejected or reversed it. 'Even though I haven't been financially earning money,' a stay-at-home father argued, 'I have still brought my contribution, which is looking after the family… My contribution is as worthy and as rich as what Diane has brought'.[68]

Where contributions were seen as equal, initially it seemed logical that assets would be equally divided should the relationship end in divorce. 'Except for the dog,' one male respondent joked. 'I don't want half the dog.'[69] 'If there's no children involved and say in five years' time we split up, one would imagine that we would divide the house,' said another. 'We would have the house valued. One would pay out the other if we wanted to keep the house or we'd sell the house and split. We'd basically sell everything or divide

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[62] Jean Curtis, "Working Mothers," *Australian Women's Weekly*, March 24 1976.
[63] Rt. Revd Oliver Heywood, "Families: A Christmas Celebration," *See* 1977.
[64] John Fogarty, "Thirty Years of Change: The History and Development of the Family Court over the First 30 Years of Its Existence.," *Australian Family Lawyer* 18, no. 4 (2006): 13.
[65] Ibid.: 15.
[66] The project, 'How Much is it Worth: Families, Work and Property' by Helen Rhoades, Shurlee Swain and Margaret Harrison, was funded by an Australian Research Council Linkage-Project grant with the Family Court of Australia as Industry Partner. Transcripts from interviews conducted as part of this project are held in the Faculty of Law, University of Melbourne.
[67] Interview DIA8
[68] Interview B21. In all quotations from interview data pseudonyms have been used to preserve anonymity.
[69] Focus group FGD1

the furniture, just divide it up.'[70] However, on reflection, many couples chose to moderate this initial assumption. The recognition of the claims of the non-working partner was dependent on an active involvement with housework and, most importantly, child care. 'If she plays a big role, then I think it should be half and half. It depends on what role she plays. If she's a lazy person then just sitting at home and waiting for him to bring in an income and do nothing at all, they have a housekeeper or whatever then I don't think he should give her something.'[71] References to 'ladies who lunch' or play tennis reflected notions of the lazy, greedy or acquisitive wife who was the focus of DLRA allegations and who figures prominently in arguments advanced by men's groups today. Amongst these couples the notion that a wife had a life-long claim on her husband for support was no longer held. If 'the kids are at school, you should be working…Both people need to contribute to a family.'[72]

In cases where there were still dependent children, most respondents suggested an unequal division in favour of the parent who took the major responsibility for their care. 'If Tom and I had been married for twenty years, and the kids had grown up and they were all educated,' one woman observed, 'then I'd say, well, fifty/fifty, but if…say Tom walked out on me…and I'm the primary care giver, and if he left all the kids at home. [Laughing] I'd say I'd need more'.[73] However there was also consideration for the needs of the other partner who would perhaps have to retrain, and to re-establish themselves in order to have continuing involvement in their children's lives.[74] In the absence of a continuing responsibility for children, few women had any expectation of being supported. Rather there was a clear sense of living in a very different world. 'Women are no longer the creatures they were in the 1950s, helpless and dependent. Women are able to have careers and have jobs and provide not only for themselves but for the man.'[75] 'It's not the responsibility of one partner to support the other partner forever when the relationship breaks down because they're leading separate lives.'[76]

However, few of the couples interviewed assumed that the relative gender equity that prevailed in their own relationships was reflected in the operations of the Family Court. One respondent, whose parents were amongst the first to divorce under the new Act, recalled: 'Out of 24 kids in my class, 23 parents were divorced and we were that leading generation and the thing is that there were a lot of fathers left behind really destitute, fucked over, because everything was given to the wife.'[77] Another drew on contemporary experience to argue: 'every single bloke that I've ever known that has separated has lost the house and the budgie, the kids, the boat, the saxophone'.[78] 'That's where I reckon the system is wrong,' observed another. 'In all the situations where parents…[separate] the husband always walks out with nothing the big loser sort of thing…he's the hardest

[70] Interview DI2f
[71] Interview B16
[72] Interview D118
[73] Interview B17
[74] Interview DI4f
[75] Interview DIA10
[76] Interview DI1
[77] Interview DIA10
[78] Interview DI2

worker.'[79] While such comments in no way reflect the spread of outcomes from the Family Court they are a powerful testimony to the impact of the attacks to which it has been subject since its creation.

As Sandra Berns has argued, conservative opposition to the Family Court is 'based upon an artificial contrast between an idealized past in which relationships endured and father breadwinners were an intrinsic part of the perfect…family, and the terrifying postmodern chaos of fractured relationships, unstable permutations of motherhood…and "disposable fathers"'. In this scenario feminists and feminism are often identified as the key architects of change.[80] However, as Genovese has shown, this allegation is part of a general attack on social reformist ideas, seeking to depict their proponents as out of touch, elite, marginal and out of date.[81] The Family Law Act was not a feminist creation. Indeed, 1970s feminists shared with the men whose interests were represented by the DLRA a suspicion of the idealism of the Act's proponents about the ability of the legislation to bring about social change. The introduction of no fault divorce did not eliminate the bitterness associated with relationship breakdown, but merely relocated hostility to proceedings dealing with the disposal of property and continuing responsibility for the children.[82] However, there is little evidence to support allegations that women have been the beneficiaries of this shift. Contested proceedings pitch the 'demands' of the greedy/lazy avaricious former wife against the 'needs' of new or future 'victim' wives, diverting attention from the persistence of gender inequalities in a society which still falls far short of the idealized future imagined by those who framed the Act over thirty years ago.[83]

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[79] Interview DI6f
[80] Sandra Berns, "Mothers-in-Law: Lying Down for the Father Again," *Hecate* 31, no. 2 (2005): 86.
[81] Genovese, "Family Histories," 180.
[82] Star, *Counsel of Perfection*, 87-8.
[83] Angela Lynch, Zoe Rathus, and Rachael Field, "The Future of Family Law Property Settlement in Australia: A 50:50 Split or a Community of Property Regime? Some Issues for Women," *Queensland University of Technology Law Journal* 15 (1999): 89.

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