

RESPONSIBLE FAMILIES

A CRITICAL APPRAISAL OF THE FEDERAL GOVERNMENT'S REFORMS

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SYNOPSIS

In this thesis, I critically appraise the latest reforms of the Australian family law system and assess the underlying philosophy of these measures.¹ I specifically analyse the introduction of shared parenting and mandatory family dispute resolution.

My starting point is that legislative changes alone cannot be used as a means of social change. Legal models cannot function correctly if they reflect an ideal rather than social reality, and in light of the current reforms, the Australian family law system risks such a fate. The system, which presumes that parents share parental responsibility upon separation (and therefore during the intact family), does not represent social truth. It appears to make an assumption that shared parenting is the societal practice, but I believe the law is really being used to impose such an ideal. If the reforms are to be successful, I argue that substantial social and economic structural change is required, in order to break down the dichotomy between men's and women's roles, which continue to define the male role as economic and public and the female responsibility as caregiving and private. This is particularly important if the Government is genuine about its aim to make parenting gender neutral in practice and not just in theory.

This thesis demonstrates that the reform measures are a response to the perceived rather than real problems identified in the family law system, and that they are largely issues raised under the influence of fathers' rights groups. The response of the Government to remedy the system is therefore flawed as it is based on misconceived notions about the family law system. It incorrectly identifies judicial discretion as a fundamental cause of the problems and tries to replace it with a more rules-based

¹ My thesis was largely written while these amendments to the system were mere proposals, however, the fact that they are now being implemented does not change the core of my argument in any way.

approach to determining children's matters. I suggest that the real problems can be found in the continuance of deeply entrenched customs and gendered role constructions, and the remedies lie in their overhaul.

The social culture that makes the mother the primary caregiver and allocates to the father diminished parental responsibility from the time the child is born needs to be transformed. A suitable legal response to the current impasse would be to begin by educating the public about the way the system works and provide counselling to families on how to structure their united life well before they reach the breakdown point. Assisting families while they are still functional, as opposed to when they are dysfunctional, would arguably make a large difference in how the family law system is understood. Moreover, it would be able to facilitate ongoing communication for separating couples and, most importantly, thereby uphold the best interests of the child.

STATEMENT OF CANDIDATE

This work has not been submitted for a higher degree to any other university or institution.

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