

DEADBEAT DADS IN GLOBAL PERSPECTIVE: A COMMENT ON MARY JANE MOSSMAN

Ruth Buchanan*

One thing that struck me while reading an advance copy of Professor Mossman's lecture was that it brought together two domains in which I have been working, family law and global economic restructuring. For as long as I have been tilling in these fields, I have had a feeling that they are linked in important ways that I had not previously been able to articulate. The lecture provided me with an opportunity to delve more deeply into my own unease about the complex ways in which state responses to globalization are interlinked with the intensifying dilemmas experienced by many women and children, post-family breakdown, struggling harder to survive in these interesting times.¹ This comment will use Professor Mossman's paper as a launch pad for my own, albeit preliminary and inconclusive, efforts to develop some linkages between these two realms.

Canada is currently undergoing what can be described in Gramscian terms as a crisis — an old order is dying and a new one has yet to be born. The economic transformations we are now experiencing have their origins in a series of interlinked changes in the global economy that have been occurring for the past twenty-five years. They include decreasing barriers to the movement of goods and investment (trade liberalization), the rise of multinationals, the dissemination of information and communication technologies — making possible the international organization of production — and the development of rapid and massive flows in global financial markets and currency speculation. In concert, these developments have serious implications for the ability of nation-states to govern their territories as they have been accustomed to in the post-war period. Some have suggested that we are seeing nothing less than a transformation of state form. As the core institutions and principles of the Keynesian welfare state are being dismantled, they are being replaced by something which might be described as the Schumpeterian workfare state, which increasingly imports the values and objectives of the private sphere into the design of social programs.² Decentralization and innovation are now valued over universality and access in the design of social programs. Benefits are conditioned upon worthiness; certain categories of recipients, like welfare recipients with too many children or repeat users of unemployment insurance, are deemed less eligible than others and consequently receive reduced benefits. To summarize, as states like Canada transform their regulatory structures to be more responsive to globalized

*Assistant Professor, Faculty of Law, University of British Columbia; formerly Assistant Professor, Faculty of Law, University of New Brunswick. This paper was presented at the Viscount Bennett Seminar held at the Faculty of Law, University of New Brunswick (Fredericton), 8 November 1996.

¹This is a reference to the Chinese curse, "May you live in interesting times."

²R. Jessop, "Towards a Schumpeterian Workfare State? Preliminary Remarks on Post-Fordist Political Economy" (1993) 40 *Stud. Pol. Econ.* 7.

market conditions, there is an increasing polarization of labour markets as well as a reduction of programs which could ameliorate the rapidly deepening divide between rich and poor.³

Yet, far from being puppets of globalization, states themselves have engineered many of the processes I am describing. For example, state action is responsible for the negotiation and implementation of “free trade” agreements, the source of many of the constraints commonly ascribed to the global economy.⁴ Increasingly, states adhere to a narrowly drawn set of policy choices, including privatization, trade liberalization and deregulation, that are said to be determined by the competitiveness of a global economy.⁵ That these prescriptions are merely the products of the dominant policy consensus of the day is rarely remarked upon. Rather, Margaret Thatcher’s famous dictum, “There are no alternatives”, encapsulates the thrust of the hegemonic discourse. If “globalization” is the Goliath blamed for this lamentable state of affairs, it is important to keep in mind that states themselves have been both the primary architects and the marketing agents for that very creature.

There is an important connection between this broader macroeconomic context and the changing tenor of contemporary discussions about social policy in Canada. We see it reflected in the shift towards a more individualized and privatized approach to social programs, through the introduction of language of responsibility and choice and the emerging distinction between deserving and undeserving recipients. These conceptual underpinnings, symbolized by the discursive shift from welfare to workfare, are also apparent in the “deadbeat dad” rhetoric at which Professor Mossman has taken aim.

In this presentation I will consider the current changes to the child support guidelines embedded within the context of these larger socioeconomic shifts. As I read Professor Mossman’s paper, I realized that I had seen patterns of adjustment similar to those she describes playing themselves out in very different contexts. Indeed, one could read Professor Mossman’s story about child support as a

³See e.g. H. Gans, *The War Against the Poor: The Underclass and Anti-Poverty Policy* (New York: Basic Books, 1995); K. Banting & C.M. Beach, eds. *Labour Market Polarization and Social Policy Reform* (Kingston, Ont.: School of Policy Studies, Queen’s University, 1995); R.J. Adams, G. Betcherman & E. Bilson, *Good Jobs, Bad Jobs, No Jobs: Tough Choices for Canadian Labour Law* (Toronto: C.D. Howe Institute, 1995); G. Picot, J. Myles & T. Wannell, *Good Jobs/Bad Jobs and the Declining Middle: 1967-1986* (Ottawa: Statistics Canada, 1990); Economic Council of Canada, *Good Jobs, Bad Jobs: Employment in the Service Economy* (Ottawa: Economic Council of Canada, 1990).

⁴R. Grinspun & R. Kreklewich, “Consolidating Neoliberal Reforms: ‘Free Trade’ as a Conditioning Framework” (1994) 43 *Stud. Pol. Econ.* 33; R. Buchanan, “Border Crossings: NAFTA, Regulatory Restructuring and the Politics of Place” (1995) 2 *Indiana Journal of Global Legal Studies* 371.

⁵H. Arthurs & R. Kreklewich, “Law, Legal Institutions and the Legal Profession in the New Economy” (1997) 35 *Osgoode Hall L. J.* [forthcoming].

homologous microcosm of these larger processes.⁶ In this paper, I will identify four key theoretical ideas in Professor Mossman's article which have parallels with my own work on globalization-induced restructuring. The "four insights" of Professor Mossman's article are:

1. Professor Mossman identifies how the "deadbeat dads" label functions to extend moral blameworthiness to all non-custodial fathers who do not pay child support, regardless of whether they can afford to or not, thus erasing the distinction based on the reasons for not paying.
2. She documents a further reinforcement of the process of privatization of family obligations through the mechanism of state action, specifically the reforms around child support. This identifies the state as the locus or the enforcer of the privatization process.
3. She identifies discursive strategies as an important part of what secures public support for initiatives such as the child support amendments, obscuring deeper or more persistent political conflicts. The idea is that the government seeks to generate a public consensus on the amendments by exercising the power to frame the terms of debate.
4. She suggests that it might be possible to influence this discursive battlefield by engineering a shift away from what she sees as a privatizing discourse about post-divorce parental obligations to a more politicizing discourse about the needs of poor children, whatever family forms they might find themselves in.

Although my treatment of each will be necessarily brief, I believe it will be sufficient to illustrate that developments in the arena of the child support guidelines are closely linked to and reflective of much larger trends. The argument that I wish to make is twofold. Firstly, the current process of global restructuring is fundamentally realigning the relationship between states, markets and society in ways that have profound implications for the social realm, including the ability to provide, collectively or individually, for children. Secondly, policy initiatives such as the child support guidelines can no longer be evaluated and discussed without taking this larger context into consideration.

⁶On "homologous microcosm" see D.M. Trubek, Y. Dezalary, R. Buchanan & J.R. Davis, "Global Restructuring and the Law: Studies of the Internationalization of Legal Fields and the Creation of Transnational Arenas" (1994) 44 Case West. Res. L. Rev. 407 at 410 and note 2.

1. Deadbeat Dads and the Rhetoric of Blame

The rhetoric of blame surrounding poverty is not confined to impecunious fathers or even impecunious parents. Blaming the poor is a social practice which has been with us for a long time. However, there was a period in the sixties and the early seventies, in Canada as well as in the United States, when public discourses about poverty were dramatically different. During this period, poverty was talked about as a social problem. Factors such as lack of education, lack of access to training, scarce opportunities, the need to care for dependent children, or even getting trapped in a very low-wage job were identified as sources of poverty which could be addressed through well-designed social policies.⁷ Although it might be argued that even during this period, the political will to address persistent social inequalities rarely lived up to the rhetoric, programs such as the Canada Assistance Plan did adhere to the ideas of universality and uniformity of benefit entitlement — principles which underpinned the earlier discourse.

Unfortunately, our faith in the ability of social engineering has declined in the intervening years and the other kind of talk has regained new vigour. The structural analyses and social responsibility that underpinned earlier claims for universalism in entitlements have been replaced by an individualized and moralized discourse about worthiness and individual responsibility. This shift is a key feature of the emerging state form that we are seeing in Europe, Canada and the U.S. — the Schumpeterian workfare state described above. Entitlements and the level of benefits are becoming increasingly tied to one's obligation to work or to enrol in training programs. For example, in Canada in the last several years, we have repealed the Canada Assistance Plan and with it, the prohibition against mandatory Work for Welfare programs.⁸ This shift towards workfare ties into the discourse of blame because the assumption in both is that people who are not working are doing so voluntarily. Like the discourse surrounding the child support amendments, the new discourses around work and welfare manage to put the vast majority of people who require assistance into the category of "undeserving" by assuming that they choose not to work. These discourses do not consider whether these people would rather have a job but cannot find one, or cannot earn enough from whatever job they have to support themselves. Only children and the handicapped get lumped into the category of deserving poor. The political question concerning the availability of well-paying or reasonably-paying

⁷See e.g. Economic Council of Canada, *Fifth Annual Review: The Challenge of Growth and Change* (Ottawa: Economic Council of Canada, 1988). See also W.E. Mann, ed. *Poverty and Social Policy in Canada* (Vancouver: Copp, Clark Pub. Co., 1970). For the U.S., see W. Chafe, *The Unfinished Journey: America Since World War II* (New York: Oxford Press University, 1986) and M. Harrington, *The New American Poverty* (New York: Holt, Rinehart, and Winston, 1984).

⁸For a commentary on the gendered impact of the repeal of the Canada Assistance Plan see M. Jackman, "Women and the Canadian Health and Social Transfer: Ensuring Gender Equality in Federal Welfare Reform" (1995) 8 C.W.J.L. 371.

employment for these individuals is concealed by the new rhetoric around welfare as it is in the talk about deadbeat dads. Both of these approaches are focused on the monitoring and disciplining of individuals who are in some sense positioned as deviant. The discourse depoliticizes the issue by shifting the focus from the social to the individual, moving potential responsibility out of the public realm and into the private.

2. Boundary Maintenance along the Public/Private Divide

We know that the state plays an important role in building and maintaining the boundaries between public and private. Professor Mossman alludes in her lecture to previous work in family law that has explored the legal mechanisms by which relations within the family are secured and maintained as a realm from which the state is excluded. Although some inroads have been made by feminists in confronting the more egregious implications of this thinking in such areas as domestic violence, the family remains one of the realms commonly considered private, in contrast to the public areas of commerce or politics. Fran Olsen has cogently pointed out how the arguments usually made to keep the state out of the familial realm parallel the arguments made to keep the state out of the market.⁹ Yet, both are based on a similar misconception that the boundary between public and private is not a “natural” or “pre-given” divide but a social construction made of shifting and conflicting social understandings. Rather than self-evidently showing us where politics begin and end, the boundary itself is a site of political conflict. Professor Mossman’s lecture clearly articulated one of the ways this imagined divide between public and private is being used to de-legitimize certain kinds of public claims and, in doing that, she revealed that the boundary itself is implicated in the political struggle over child support.

I want to go further and suggest that most of what is commonly thought of as privatizing activity, those things we think of as “getting the state out”, do not really function in that way. “Getting the state out” usually means simply “changing the rules”. If one thinks about the processes of privatization and deregulation, which are the key aspects of government restructuring strategies in the current era, one realizes that they require a surprising amount of pro-active state action.¹⁰ In fact, what is happening is mostly re-regulation, since new regulations are required to deregulate. Similarly, privatizing calls for a considerable investment of energy and resources on the part of government, in the hope of securing longer-term reductions in state

⁹F.E. Olsen, “The Family and the Market: A Study of Ideology and Legal Reform” (1983) 96 *Harvard L. Rev.* 1497.

¹⁰See I. Bakker, “Introduction: The Gendered Foundation of Restructuring in Canada” in I. Bakker, ed., *Rethinking Restructuring: Gender and Change in Canada* (Toronto: University of Toronto Press, 1996) 3 at 4-5.

activity. Nonetheless, the business of privatizing and deregulating keeps conservative governments, such as those of Premiers Mike Harris and Ralph Klein, very busy. An example is provided by the tremendous amount of negotiation and paper devoted to a “free” trade agreement like the NAFTA. “Liberalized” trade actually involves making countries like Mexico pass a lot of new laws, such as provisions relating to the protection of intellectual property, in order to harmonize the relevant provisions in all three countries. It should not be hard to see the irony here — those who talk the most about how important it is to get the government out of things, including the government itself, are the first ones to enlist the aid of the state in making the new rules. There is no risk of the state becoming obsolete in the context of this process of deregulation or privatization. In the context of the family, as in the market, the state is always present. One should think of the current process of restructuring as a struggle over which rules one enlists the aid of the state to enforce, and who benefits from their enforcement.

Professor Mossman suggests that the new proposals for child support are further examples of government initiatives aimed at “off-loading” responsibilities in an effort to minimize financial obligations. It is true that the imagined “nuclear family” unit has become the rhetorical container for a wide range of caretaking responsibilities, even as traditional families become increasingly less statistically significant. Marlee Klein has illustrated this process in a forthcoming study of the privatization of child welfare in Alberta.¹¹ One of the dilemmas of the re-privatization (read re-familialization) of caretaking, concealed by the pro-family rhetoric, is the fact that women’s participation in the labour force has dramatically increased while the real value of working class wages has declined.¹² Most women, even in two-parent families, cannot afford to stay at home to care for a growing circle of dependants. As demands on families are rising, their ability to meet those demands is shrinking. Sadly, we do not see this as a public problem; the discourse of privatization instead encourages us to think of these obligations as personal choices, made by individuals, and for which they alone must bear the often difficult consequences.

3. Discourse and Ideology

The third pillar of Professor Mossman’s analysis is the observation that public discourse is an important mechanism through which new accommodations in the social and economic fabric are stitched together, such that the choice of a label like “deadbeat dad” has socially and politically significant consequences. Language indeed plays an important role in constructing what gets considered “true” and who

¹¹M. Klein, “Blue Meanies in Alberta” in S. Boyd, ed. *Challenging the Public/Private Divide: Women, Family, Work, and Law* (Toronto: University of Toronto Press, 1997) [forthcoming].

¹²See generally, P. Armstrong, *Labour Pains: Women’s Work in Crisis* (Toronto: Women’s Press, 1984).

is considered "authoritative" in our society. In the context of our public discussion, if you are not one of the people considered as authoritative, or if you are not speaking in an authoritative language, then you have a much lesser chance of being heard.¹³ So, because some ways of talking are more persuasive than others in our public culture, language itself becomes a site of social conflict and social struggle.¹⁴ Language is a medium for the exercise of power by some groups over others. To put it concretely, there is more at stake in calling someone a deadbeat dad, particularly when it is the federal government who does so, than simply the accuracy of that representation.¹⁵ Professor Mossman's point is not that the "deadbeat dad" description is entirely incorrect, but that the categorization made by the government is a positive act which carries real political consequences. Her lecture very clearly reveals what those consequences can be for children who do not have the good fortune to be born into wealthy families. The work of exposing the assumptions behind a particular label, like the discourse surrounding the child support guidelines, helps reveal how social expectations about the appropriate role of government are being reconstituted through what I have come to call "restructuring discourses".¹⁶ Just as the talk about deadbeat dads shows us where to look for both the cause and the solution to the problem of child poverty after divorce, governmental talk of deficits and debt tells us that there is only one right response to the current problems and it includes reductions of public spending on social welfare programs. Restructuring discourses tell us that we cannot escape adjustment. An adjustment is defined in terms of reducing fiscal and regulatory burdens on businesses and also in lowering our expectations about what the state can do. Lisa Philipps has illustrated how framing these issues in the technical languages of accounting, statistics and economics has functioned to "depoliticize one of the most pressing social conflicts of our time, translating it into a matter of expert knowledge and shrinking the space for popular resistance to the harmful effects of such policies on many citizens".¹⁷

¹³For a thorough discussion of the issues raised by research and dominant versus subordinate speech practices, see L. White, "Subordination, Rhetorical Survival Skills and Sunday Shoes: Notes on the hearing of Mrs. G" (1990) 38 Buff. L.R. 1.

¹⁴L. Philipps, "Discursive Deficits: A Feminist Perspective on the Power of Technical Knowledge in Fiscal Law and Policy" (1996) 11 Canadian Journal of Law and Society 141 at 150.

¹⁵See N. Fraser, "Struggle over Needs: Outline of a Socialist-Feminist Critical Theory of Late Capitalist Political Culture" in *Unruly Practices: Power, Discourse and Gender in Contemporary Social Theory* (Minneapolis: University of Minnesota Press, 1989) 166.

¹⁶R. Buchanan, *The Flexible Woman: Gendered Implications of Post-Fordist Narratives* (Toronto: Faculty of Law, University of Toronto, 1996); citing J. Brodie *Politics on the Margins: Restructuring and the Canadian Women's Movement* (Halifax: Fernwood Publishing, 1995).

¹⁷Philipps, *supra* note 14 at 155:

At the same time they have helped to legitimate the way restraint policies exploit and deepen class, gender, and other social inequalities by promoting an ideological vision of society in which market power is minimally constrained, and individuals are held personally responsible for their own economic difficulties.

Restructuring discourses are dangerous to the extent that they function to close off, rather than open up, spaces for political conversation and debate.¹⁸

4. Politicizing the Issue: The Shift to Needs Talk

Having identified the power of language to determine what is and is not a legitimate political claim, Professor Mossman resolves that is that we must try to influence this discursive battlefield. She argues that to do this, one should try to shift the conversation away from the issue of noncustodial parents' obligations to support their children towards the needs of the children themselves. This suggestion is sensible, insofar as needs talk is an "important medium for the making and contesting of political claims" in our culture.¹⁹ One way to raise something that is normally considered outside the political realm as an issue is by framing it in terms of needs. However, Mossman neglects to consider that needs talk also comes with its own discursive baggage, complete with compromises and contradictions. Philosopher Nancy Fraser has described needs politics as comprised of three analytically distinct moments: the struggle to *establish* the political status of a given need, the *interpretation* of the need and what it would take to satisfy it, and finally, the struggle over the *satisfaction* of the need itself. The first step is what Professor Mossman is calling for — a shift towards a public discourse about children's needs, in order to establish the economic disadvantage of children as a political question. To do that, we must recapture it as an issue from the privatizing discourses of the family or the economy. This is not an easy task, for, as we have seen, the overarching technical discourses of economic restructuring have been used to legitimate a sweeping array of cutbacks to social programs. Needs talk has less politicizing clout these days than in the past.

Not only is needs talk decreasingly effective, but, in the context of current public discourses around poverty, invoking the "needs" of children may be problematic for another reason. If the current rhetoric of blaming the poor rests on the maintenance of a conceptual divide between "deserving" and "undeserving" poor, talk about

See also, C. Denis, "Government Can Do Whatever it Wants: Moral Regulation in Ralph Klein's Alberta" (1995) 32 C.R.S.A. 365.

¹⁸As Janine Brodie puts it,

[R]estructuring is a key word that represents a prolonged and conflict-ridden political process during which old assumptions and shared understandings are put under stress and are eventually either rejected or transformed, while social forces struggle to achieve a new consensus — a new vision of the future to fill the vacuum created by the erosion of the old.

J. Brodie, "Restructuring and the New Citizenship" in I. Bakke, ed. *Rethinking Restructuring: Gender and Change in Canada* (Toronto: University of Toronto Press, 1996) 126 at 127.

¹⁹Fraser, *supra* note 15 at 161.

children's needs may unwittingly reinforce that boundary. Placing the interests of "deserving" poor children at odds with those of their "undeserving" poor parents could have the result of undermining whatever good might have come from the recognition of the children's needs in the first place.²⁰

Another approach to the re-politicization of child poverty would be to try to justify its political importance on technical grounds, in the language of economists and statisticians. A current example is a recent Statistics Canada study which links poor school performance to child poverty.²¹ If we could also demonstrate a connection between an uneducated workforce and poor economic performance, we might be able to establish an economic argument for supporting children as a matter of public policy. However, this approach also has its limitations. Technical and bureaucratic discourses, including legal discourse, carry their own internal logics and assumptions which can undermine the larger project of reform, even as they help gain particular victories. As Professor Mossman has illustrated all too well in the arena of spousal support, well-intentioned law reform can work against those it was intended to help.²² Therefore, even if we are successful in bringing the question into the political arena as Mossman suggests, we must be attentive to the process through which the need is to be interpreted and satisfied. This is usually the stage at which expert discourses play the most significant role in containing the transformative possibilities of political claims.

Conclusion

In the end, while I agree with Professor Mossman's diagnosis, I don't entirely agree with her cure. While the effort to translate the "private griefs" of child support into the "public sorrow" of unacceptable levels of child poverty is a start, it may prove to be a false one. As I've suggested in this brief comment, the types of public discourse which might be deployed to justify increased levels of public support for children — needs talk and economic rationality — are likely to function in ways that constrain and limit the effectiveness of reforms. While recognizing the ambiguities and contradictions of public discourses seems to make the political project of equitable social change hard to imagine, I do not want the reader of this comment to believe that I espouse doing nothing. Rather, I think it is important to be attentive to the political context in which we are operating and to the ways our efforts at reform may become derailed or co-opted by larger political forces.

²⁰The Federal government's current policy emphasis on child poverty, while welcome in some respects, also has this effect.

²¹A. Mitchell, "The Poor Fare Worst in Schools: Better Off Children End Up in Gifted Programs; Low Income Ones, in Remedial Classes" *The Globe and Mail* (18 April 1997) A1.

²²M.J. Mossman, "'Running Hard to Stand Still': The Paradox of Family Law Reform" (1994) 17 *Dalhousie L.J.* 5.

In the current climate, in which the rhetoric of globalization takes shape through changes in the nature and competencies of states, calls for substantially increased support for any single policy initiative, even for the support of poor children, seem unlikely to obtain sufficient funding to effect any fundamental transformation. The effort to support children must be linked to a more broad-based approach to the questions of social justice and fairness in conditions of globalization. It makes little sense, except as a political manoeuvre, to consider the plight of poor children independently from that of their parents. As Professor Mossman points out, the poverty of our children is not primarily a question of individual choice or individual failure, but a matter of public choices and public failings. The way the Canadian state chooses to construct its relationship to the global economy has important implications for the distribution of income and opportunity throughout the country. The equal opportunity to acquire reasonably paying employment, including working conditions hospitable to the demands of single parenting, would do much more to improve the lot of Canadian children than the current reforms to the *Divorce Act*. While grappling with the larger questions of global economic restructuring might initially seem to be both difficult and unnecessary in formulating an appropriate response to the problem of child poverty in Canada, I have argued precisely the opposite in this comment. It is only by grasping the larger forces that currently structure and constrain both public discourse and state action that we will be able to effectively work within them. While Professor Mossman has given us an admirable beginning on this project in her lecture, she did not set our sights quite broadly enough.