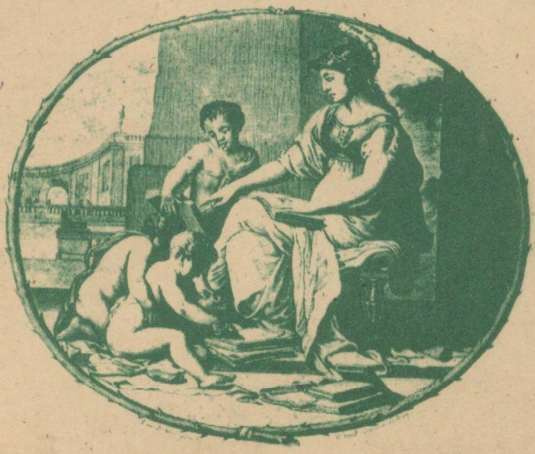
WORKING PAPERS IN THE HUMANITIES 4

Humanities Research Group



PUBLIC AND PRIVATE

Edited by
David Klinck

UNIVERSITY OF WINDSOR, 1996

Publications of the

HUMANITIES RESEARCH GROUP

GENERAL EDITOR Jacqueline Murray

Working Papers in the Humanities 4

University of Windsor

Windsor, Ontario, Canada N9B 3P4

PUBLIC AND PRIVATE

Edited by

David Klinck

Working Papers in the Humanities 4

Humanities Research Group

University of Windsor

1996

Canadian Cataloguing in Publication Data

Main entry under title:

Public and Private

(Working papers in the humanities 4)
Lectures given 1994-95 as part of the Distinguished Speaker Series "Public and Private" sponsored by the Humanities Research Group, University of Windsor.
Includes bibliographical references.
ISBN 0-9697776-3-9

1. Public domain 2. Privacy, Right of 3. Political sociology I. Klinck, David, 1941- II.University of Windsor. Humanities Research Group. III. Series.

JC336.P86 1996 301 C96-900296-3

CONTENTS

PREFACE

Since 1989 the Humanities Research Group has been encouraging cross-disciplinary cooperation at the University of Windsor. Our annual Distinguished Speaker Series, in particular, centres on a theme of contemporary interest from a variety of disciplinary perspectives. By bringing the wisdom of the humanities to bear on the complex problems which confront us, new insights can be gained and new means of addressing issues can be developed. Nowhere is this more evident than for the contested boundaries between *Public and Private.*

The current volume, fourth in the Working Papers in the Humanities series, examines the tension between these two separate spheres, a tension that is escalating in an era of technological transformation. Crossing cultures and technologies, the essays focus our attention on the function that separate spheres have traditionally fulfilled for individuals and societies. They also address the problems and, indeed, the threat posed by the blurring of these boundaries. Whether it be child custody or personal consumption, the private is increasingly becoming public. As the essays and colloquia reports so eloquently attest, these are difficult problems which demand our full attention. They are also questions which merit, even demand, analysis from the humanities. Electronic surveillance or state intervention in the family are too easily left to technocrats and bureaucrats. Yet, by examining the issues of public and private from a humanities perspective, they appear more complex and problematic.

The appearance of these Working Papers are the result of the efforts and attention of many people. David Klinck acted as editor of the volume, assisted in the copy-editing by Kanji Wignarajah. Meagan Pufahl compiled the splendid bibliography and Rachelle Marchand provided technical expertise and computer skills. Rosemary Halford supervised and coordinated the production of the volume at every stage. Their efforts are amply rewarded by the volume at hand.

Jacqueline Murray
Director
Humanities Research Group

INTRODUCTION

How far away we are in advanced, capitalist societies from the benign division between "public" and "private" as described by Richard Lee for the Inuit. There, the contrast between public and private might be characterized as a distinction between the times when dispersed family groups engage in foraging, and occasions when these groups come together for trade, marriage, and celebration. The seasons and kin ties define the opposition between these two periods — indeed to impose contemporary concepts of "public" and "private" upon them is to freight it with meanings peculiar to western societies. The speakers in this 1994-1995 series sponsored by the Humanities Research Group point out a wide range of vexed relationships between these spheres which has become fundamental to law, morality, and public policy. In societies like our own, the household and the public square can scarcely offer the paradigmatic cases for making sense of private and public when the private sphere must be stretched to include the operations of multi-billion-dollar multinational corporations and the public has become largely synonymous with the workings of the state. These contending forces now define the moving boundary between the two when "privatization" comes to mean the shifting of social services or assets from state control to corporate control, and "public ownership" means the shift back. These conflicts create overtones associated with the current sense of "public" and "private" because governments can divest themselves of "public" issues by handing them over to "private" business which can then fend off public scrutiny from behind its cloak of "privacy." Because of this, public and private have become associated with the defining differences between the political left and right in much of the postwar period.

"Public" and "private" is also a gendered distinction. Feminist critics have exposed the pretensions of classical legal and economic theories which fail to recognize the differential impact of these conflicts and boundary shifts on women and men. Though both the state and corporate worlds remain dominated by men, the "private" is subdivided between the "private private" of households and the "public private" of business which gets away with masquerading as just another "household" among many in traditional economic thought. The household has long been associated with women, and the "private" associated with "feminine" traits of intimacy, trust, emotion, nurturance, and care. The

tenacity of this distinction is clear in the degree to which even female wage labour is typecast as nurturance work. (The parallel subdivision on the public side is between the state and the nonprofit sector. The latter acts as a set of public organizations dedicated to carrying out social service, support, and public education. These "feminine" tasks partake of the subordination, low pay, and lack of respect accorded to the household in contrast to the "real" business of making money.) As Susan Boyd points out, "privatization" then takes on further meaning in this context. Apart from shielding governments from public accountability in areas it puts into the hands of private business, it also means thrusting work once assumed as a public responsibility into households. While business can always be choosy about accepting privatized industries by taking only that which makes money, the rest — caring for the sick, aged, unemployed, and very young — often must be shouldered by women, who are unpaid in households, and by volunteers who are unpaid in the nonprofit sector.

Much of the interpenetration of public and private, and the use of the distinction as a rhetorical weapon in political battles, unfolded during the seminar over which Susan Boyd presided, on the recognition of same-sex couples. Traditionalists argue that sexuality is private and thus not appropriate for public recognition or state institutionalization thereby echoing a variant of the conventional liberal position articulated by Pierre Trudeau that the state has no place in the bedrooms of the nation. It is a position which denies the myriad ways in which the supposedly private sphere is already legally regulated and indeed shaped and constituted by the state through marriage law, workplace benefits, adoption and custody, pensions, or taxation.[1] Similarly lesbian and gay opponents to relationship recognition appropriate the same denial, constructing the "private" as a realm of freedom shielded against state intrusion, when the historical record shows instead that same-sex couples are governed by a regime of regulation by omission rather than regulation by formal recognition. While gay and lesbian proponents of relationship recognition seek the same set of legal options open to heterosexual relationships, the logic of the heavily loaded rhetoric of contemporary debates over public and private leads to the conclusion that same-sex relationship recognition may indeed be won, not so much because of the compelling logic of equality, but because relationship recognition will allow the state to enlist lesbians and gay men as a new class of unpaid domestic labourers who can be required to take on part of the caring work slashed from government budgets.

---

[1]On this question see, for example, R W Connell, "The State, Gender, and Sexual Politics," *Theory and Society* 19, no. 5 (1990): 507-44; Jacques Donzelot, *The Policing of Families* (New York: Pantheon, 1990); and Gary Kinsman, *The Regulation of Desire* (Montreal: Black Rose, 1987).

Ann Cavoukian, Assistant Commissioner of the Information and Privacy Commission of Ontario, took another step in defining the tug-of-war relationship between public and private by talking about the work of the Privacy Commission, essentially a state regulatory agency intended to keep the government public and citizens private. Defining the question as one of "informational self-determination," her work includes curbing a government tendency to keep information out of the public domain (and thus subject to public debate), while curbing the degree of information about "private" citizens collected by the public domain (that is, the government). It is a mandate which endorses highly conventional, and problematic, distinctions embedded in the traditional liberal definition of public and private. Cavoukian looks with some longing to Québec and the European Union, which have moved beyond this antiquated conception to recognize the need to regulate corporate control of information technology as well. This "private" corporate accumulation of information threatens the "private" worlds of ordinary citizens subject to credit checks, security controls, electronic surveillance, and target marketing.

Some social theorists such as Jürgen Habermas, Jean Cohen and Andrew Arato, and Samuel Bowles and Herbert Gintis[2] have sought to identify a more thorough-going solution to the problems of public and private in contemporary societies by arguing for the development (or revival) of a third realm of organized citizenry to counterbalance the hegemony of state and capital. This reinstatement of the life experiences of people organized through dialogue (Habermas), civil society (Cohen and Arato), or democratic movements (Bowles and Gintis) looks toward ways to hold both the state and capital accountable to citizens, to strip away the cloak of "privacy" which protects big business, and to stimulate local-level democratic impulses suffocated by big government. This approach finally does away with the troubled distinction of "public" and "private" which is held so strongly in our society. It rejects the over-valuation of the private so favoured by neo-liberal thought today which accelerates the trend toward privatization and expands the realm of social relations removed from public accountability. Feminists have, as well, always been sceptical of the private, as privacy has often worked not so much to protect individual rights as to protect patriarchal power in the household and thus shield violence against women from judicial redress. Even private households need some public accountability as the feminist slogan, "the personal is political," proclaims. Feminism also challenges the conflation of the "public" with the state and gendered subordination reinforced by the distinction.

---

[2] Jürgen Habermas, *The Theory of Communicative Action* (Boston: Beacon, 1987); Jean Cohen and Andrew Arato, *Civil Society and Political Theory* (Cambridge: Massachusetts Institute of Technology, 1992); and Samuel Bowles and Herbert Gintis, *Democracy and Capitalism* (New York: Basic Books, 1986).

Meanwhile we struggle with the distinctions which we have organized our society around, and the following contributions stretch and challenge the ways in which contemporary life remains divided by "public" and "private".

Barry D Adam
Department of Sociology and Anthropology
University of Windsor

THE PUBLIC, THE PRIVATE AND THE WORLD SYSTEM: THE JU/'HOANSI-!KUNG TODAY

Richard Lee

The idea of the division of cultural space into public and private spheres, the former a domain of men and highly-valued, the latter a domain of women and of lesser importance, has been a staple of feminist discourse in anthropology at least since the 1970s.[1] Debate has continued about whether this condition was primordial or historically contingent, and whether it was a cause or merely a symptom of women's oppression. Feminist anthropology, however, is not the only forum in which the Public/Private trope has been central. In the ongoing conversations among feminists, reference is rarely made to an older discussion of the public and the private spheres that approaches the problem from a quite different but also compelling angle.

This paper will explore the sense of public and private spheres developed by Marcel Mauss, one of the giants of modern social thought, and will apply it to a case study of the Dobe Ju/'hoansi of Botswana, one of the world's best documented hunter-gatherer groups. Despite not being part of the feminist discourse, Mauss's formulation is not without implications for feminism and more broadly for the understanding of the human condition.

In 1905 the great French scholar, nephew of Emile Durkheim, co-founder of the Annales School, and author of the classic, "Essai sur le Don," published a paper — little read today — that approached the question of public and private in a novel way. The substantial (over ninety page) paper was entitled "Essai sur les variations saisonières des

---

[1]See Michelle Rosaldo and Louise Lamphere, eds. *Women, Culture and Society* (Stanford: Stanford University Press, 1974); Rayna Reiter, ed. *Toward an Anthropology of Women* (New York: Monthly Review Press, 1975); and Michaela Di Leonardo, ed. *Gender at the Crossroads of Knowledge* (New Haven: Yale University Press, 1991).

sociétiés eskimos: étude de morphologie sociale."[2] In it Mauss (with assistance from his student Henri Beuchat) made one of his frequent excursions onto the terrain of the emerging discipline of social anthropology, and built an insightful model around the seasonal variations observed in Inuit social organization.

Rather than wandering randomly over the landscape, Mauss noted, Inuit societies were observed to follow a predictable and regular pattern. They aggregated into large social groupings in one season of the year and dispersed into numerous smaller groups in another. The larger grouping phase Mauss called "la vie publique" and the smaller group phase "la vie privée."

It bears mentioning that Mauss's goal in developing this idea was not primarily to shed light on the internal dynamics of Inuit life.[3] But in presenting the argument for the two seasonal phases in the life of a hunter-gather group, Mauss had hit upon a major insight in the nature of hunter-gatherer social organization. It is striking that virtually *all* known hunter-gatherer groups exhibit a similar pattern of alternating periods of aggregation and dispersion: all divide their annual round into a public and a private phase.[4] In hundreds of societies based on hunting and gathering — in Australia, the Americas, Asia and Africa — individuals and families were observed to spend the larger part of the year living in small groups and moving across the landscape in search of food. But all were observed to aggregate for at least one part of the year in larger groups, usually at a time of abundance, in order to carry out the social activities essential to the society's reproduction. These

---

[2]Marcel Mauss, "Essai sur les variations saisonières des sociétés eskimos: Étude de morphologie sociale," *Annales Sociologiques* 9 (1904-05): 39-132. Three quarters of a century passed before an English translation appeared: *Seasonal Variations of the Eskimo: A Study in Social Morphology* (in collaboration with Henri Beuchat) translated and with an introduction by James J Fox (London: Routledge and Kegan Paul, 1979).

[3]His purpose was a more problematic one, to demonstrate that since their timing was not easily linked to seasonal subsistence demands, the existence of the two phases demonstrated that the dynamics of the system were social and not ecological in origin. Mauss then took the seasonality argument as a point for departure for a polemic against the environmental determinism then in vogue.

[4]For extended discussion of this point see Richard Lee, *The !Kung San: Men, Women and Work in a Foraging Society* (Cambridge and New York: Cambridge University Press, 1979): 354-69, 446-47; David Damas, "Characteristics of Central Eskimo Band Structure," in *Band Societies*, ed. David Damas (Ottawa: National Museum of Canada Bulletin 228, 1969), 116-38; and Mervyn Meggitt, *Desert People: A Study of the Walbiri Aborigines of Central Australia* (Sydney: Angus and Robertson, 1965).

included marriage brokering, trading, initiation rites, and large scale communal rituals.

The correlation of aggregation with a given season was not invariable. For example the Inuit of the central Canadian arctic would aggregate in the winter months at large coastal seal hunting camps, and would disperse in the summer to inland fresh-water fish camps. The sub-arctic Cree and Ojibwa by contrast, reversed the pattern, coming together at large fishing camps *in the summer* and dispersing in the winter for moose and caribou hunting and later tending traplines.[5]

Across many societies the size of grouping showed remarkable consistency. Smaller groupings tended to be in the range of fifteen to forty-five individuals while the larger aggregations could be fifty, one hundred, two hundred, or more. Length of time spent in each of the two modes was also variable. For some the aggregation phase could be as short as two to four weeks; in other, semi-sedentary societies, such as the North West Coast Haida and Tsimshian, the greater part of the year was spent in the larger settlement, with a few weeks or months dispersed at fishing and hunting camps.

Despite the variations, the commonalities perceived by Mauss were striking: virtually all hunter-gatherers built their annual round around a dialectic of social as well as ecological imperatives; with social ends being served in the "public life" phase (at the cost of increased social stress), and ease of subsistence and low social stress being the primary virtues of the "private life" phase. Hunter-gatherer folk from many societies speak of the pleasures of coming together in large groups but also recognized the dangers of heightened interpersonal tensions from having so many people together in one place. Each society and local group found the combination of the two phases that suited it best, balancing their social needs against the limits imposed by their local ecology.

Mauss brought to light an important feature of the internal dynamic of life in hunting and gathering societies, a feature amply confirmed by subsequent research. But in order to do so, Mauss of necessity had to abstract general principles of social organization at the expense of historical circumstances. The effects of European colonial expansion were barely developed in the 1905 paper. However the important question remains of what happens when the internal dynamic of hunters and gatherers is overridden by the steamroller of modernity, when hunters and gatherers are incorporated into wider state and economic structures, where the rhythms of existence are set by distant markets

---

[5]For the Inuit see Damas, "Eskimo Band Structure." For the Cree/Ojibwa see Edward Rogers and Mary Black, "Subsistence Strategy in the Fish and Hare Period, Northern Ontario: The Weagamow Ojibwa, 1880-1920," *Journal of Anthropological Research* 32 (1976): 1-43.

and bureaucracies. Does the public and private phase disappear, alter or adapt? The more general question: when band societies are incorporated into states do they become indistinguishable from rural poor everywhere or do they retain some unique features?

If we assume for the moment, as Mauss did, that the pattern observed in hunter-gatherers has some general applicability to human history, then the interest in Mauss's formulation is more than merely academic. It follows that the aggregation-dispersion pattern was once universal and that the pattern was lost as the vast majority of humanity came gradually over millennia to live in ever larger and more sedentary social groupings, culminating in the vast cities and states of the present. How does a world-historical process of transformation like sedentarization, which occurred over millennia in the majority of humankind, look when it is compressed into the space of a few generations? This is a question I would like to address drawing on research on the !Kung.

The Ju/'hoansi/!Kung

The !Kung San or Ju/'hoansi, hunters and gatherers of Botswana practised a largely autonomous hunting and gathering way of life into the twentieth century, and during fieldwork in the 1960s and 1970s, the elements of Mauss's Public/Private were still clearly visible. In the last two decades, however, the Dobe Ju have been rapidly incorporated into the Botswana state; today bureaucratic and to a lesser extent market imperatives dominate the spatial organization of Ju settlements. The sheer magnitude of these changes and their rapidity are hard to comprehend. The life of the Ju/'hoansi was certainly far from static in the centuries before 1900, but the degree of change in the decades since 1970 must arguably exceed that which occurred in the two or three centuries preceding.

Known to millions as leather-clad hunter-gatherers wresting a living from the Kalahari desert, the !Kung San have come to occupy a special place in the scholarly and popular imagination. Since the first modern studies in the 1950s and 1960s, the !Kung research has become part of the ethnographic canon and a major industry for generations of students. The mass media have taken them to heart with National Geographic and other TV specials, while *The Gods Must be Crazy, Parts 1 & 2* are among the highest grossing non-Hollywood films of all time. Such popular treatments, often highly romanticized, ignore the fact that the !Kung — like other foragers — have become increasingly drawn into the World System. Their remoteness and desert location, long effective barriers to colonization, no longer protect them. Cash, poverty, class formation, bureaucratic control and militarization are just some of the forces that have shaped the daily lives of the !Kung in the 1980s and 1990s.

The Dobe area is located in one of the most remote corners of Africa, on the border between Namibia and Botswana. Yet the rapidity of change has been breathtaking. Two images register the scope and magnitude of social change among the !Kung since the early days of field work. During my 1963 research, the Dobe area's remoteness was measured by the fact that it received only one motor vehicle visit from the outside world every four to six weeks; perhaps a dozen vehicles a year. During 1987 field work, I counted a motor vehicle every *four to six hours*, 1500 to 2000 per year, a one hundred-and-fifty fold increase! These vehicles brought a constant stream of government officials, health workers, drought relief shipments, and traders to the Dobe area, in striking contrast to the situation a generation before.

Perhaps even more telling is a comparison that gives a sense of the changes in !Kung world view: at Dobe in October 1963 I had the only radio in a fifty-mile radius, making me possibly the last North American to learn of the assassination of John F Kennedy; I tuned into the Voice of America by chance five days after Dallas. When I tried to explain the tragic event to the !Kung, no one had the slightest idea who Kennedy was, and few of them had even a vague concept of America. Now fast forward to the 1990s; in August 1991 during the attempted overthrow of Mikhail Gorbachov things were different; the residents of Dobe were following the events in Moscow on their own transistor radios, dozens of them, and holding animated discussions as developments unfolded.

These two images offer a window on the epochal changes in the lives and circumstances of the !Kung. Yet despite the changes, the !Kung do persist as a people, embattled and struggling, but a people nonetheless with a clear sense of themselves, rooted in what they articulate as their history of autonomous hunting and gathering. As the !Kung have come to political consciousness there is an emerging determination to take hold of their own destiny and fight against stereotyping. One way they are doing this is the question of names. The !Kung have always called themselves Ju/'hoansi, "real or genuine people" and would like others to do the same. To acknowledge their new sense of empowerment, many anthropologists and development agencies, particularly in Namibia have adopted this term of self-appellation.

As reported in a now-classic series of studies,[6] the Ju/'hoansi-!Kung

---

[6]See for example, Megan Biesele, *Women Like Meat: The Folklore and Foraging Ideology of the Kalahari Ju/'hoan* (Bloomington and Johannesburg: Indiana University Press and Witwatersrand University Press, 1993); Nancy Howell, *The Demography of the Dobe !Kung* (New York: Academic Press, 1979); Richard Katz, *Boiling Energy: Community Healing among the !Kung* (Cambridge: Harvard University Press, 1982); Lee, *Foraging Society*; Richard Lee, *The Dobe Ju/'hoansi,* 2d ed. (New York: HBJ-Holt, 1993); Richard Lee and Irven DeVore, eds., *Kalahari Hunter-Gatherers: Studies of the !Kung San and Their Neighbors* (Cambridge: Harvard University Press, 1976); Marjorie

in the 1950s and 1960s were largely hunter-gatherers who foraged for game and wild vegetable foods with no domestic animals except the dog (and some groups lacked even these). About nine hundred lived in the Nyae Nyae of South West Africa (now Namibia) and about five hundred in the Dobe area of Bechuanaland (now Botswana). In the Dobe area the Ju/'hoansi shared their large territory with some three hundred recently-arrived Herero pastoralists and several thousand cattle.[7] South West Africa, a former German colony, had been administered by South Africa since 1919; the British administered Bechuanaland. In neither area was there any direct governmental presence until about 1960.

In 1963 three-quarters of the Dobe Ju/'hoansi were living in camps based primarily on hunting and gathering while the rest were attached to Black cattle posts. It was the hunting and gathering camps that were the subject of sustained anthropological investigation in the 1960s.

Their public/private phases of the annual round can be described as follows:[8]

—In the Fall, (March to May) as the summer waterholes dried up, the 500 Ju would fall back on the eight permanent waterholes of the Dobe area.

—They would remain in larger groupings of 60-150 through the winter dry season (June to September) subsisting largely on the rich harvests of wild foods (particularly the Mongongo nut, Tsin bean and Baobab fruit) that became available in this season. Winter was also the time for large ceremonial aggregations. Periodically the Men's initiation ceremony, *Choma* was held, a six week camp of up to 200 people.

—The spring late dry season (September to October) was a difficult time: people remained in the large groupings but had to walk long distances to find food.

—The coming of the rains were welcomed in November and December; new growth appeared and along with it, new crops of fruits and berries. The larger groupings began to break up as people dispersed on short trips to distant food areas.

Shostak, *Nisa: The Life and Words of !Kung Woman* (New York: Vintage Books, 1983); John Yellen, *Archaeological Approaches to the Present* (New York: Academic Press, 1977). See also Lorna Marshall, *The !Kung of Nyae* (Cambridge: Harvard University Press, 1976); Lorna Marshall, *For Food and Health: Beliefs of the Nyae Nyae !Kung* (Cambridge: Harvard University Press, forthcoming); and the film by John Marshall, *N!ai: The Story of a !Kung Woman* (Watertown: Documentary Educational Resources, 1980).

[7]Cattle were a relatively recent arrival in the Dobe area, dating from the turn of the century, and in significant numbers only from the 1950s.

[8]Lee, *Foraging Society*, 354-64.

—January through March was the time of major dispersal. Water became available at many points and the people broke up into small mobile groups of 10-25 to take advantage of it.
—Finally with the onset of Fall the water points dried up one by one and once again the people fell back on the winter waters initiating a new seasonal cycle.

The general pattern of public/private phases was not invariable. Poor rains could force an early return to permanent water in April or even March, and strong rains could allow the people the option of remaining dispersed into June or July. Similarly social imperatives worked on the seasonal patterning. If people had a good reason for staying together such as the performance of a ceremony, they would do so even if it meant very hard work to find food; and if there was conflict in the camp, people might break up even if food was plentiful. The Ju/'hoan annual round thus provided an excellent illustration of Mauss's principle of the dialectic between social and ecological imperatives in the patterning of hunter-gatherer social life.

After Botswana achieved its independence from Britain in September 1966, the pace of change accelerated and has continued to accelerate up to the present. In the Dobe area of 1964 there had been no trading stores, no schools, no clinics, no government feeding programs, no boreholes, and no resident civil servants (apart from the tribally-appointed headman, his clerk, and constable). By 1995 all these institutions were in place and the Dobe people were well into their third decade of rapid social change; they had been transformed in a generation from a society of foragers — some of whom herded and worked for others — to a society of small-holders who eked out a living by herding, farming, and craft production, along with some hunting and gathering.

What has happened to the public/private phases of Ju/'hoan life since these changes took place? Ju villages today look like other semi-permanent Botswana villages. The beehive shaped grass huts are gone, replaced by semi-permanent mud-walled houses behind makeshift stockades to keep out cattle. Villages ceased to be circular and tight-knit. Twenty-five people who lived in a space some 20 by 20 metres now spread themselves out in a line village several hundred metres long. Instead of looking across the central open space at each other, their houses now face the kraal where cattle and goats are kept, inscribing in their living arrangements a symbolic shift from reliance on each other to reliance on property in the form of herds.[9]

Formerly the Ju spent the smaller part of the year in the large-group phase and the larger part dispersed in the small group phases. Today the seasonal patterning of aggregation-dispersal has been reversed. The

---

[9]For an interesting discussion of spatial organization see John Yellen, "The Transformation of the Kalahari !Kung," *Scientific American* 262 (1990): 96-105.

Jú spend most of the year aggregated in the semi-permanent villages and a few months dispersed in smaller camps that may combine hunting and gathering with tending small herds of cattle.

Hunting and gathering, which provided Dobe Ju with over eighty-five percent of their calories as recently as 1964, now supplies perhaps thirty percent of their food. The rest is made up of milk and meat from domestic stock, mealie meal and other grains, and vast quantities of heavily-sugared tea whitened with powdered milk. Foraged foods and occasional produce from gardens make up the rest of the vegetable diet. For most of the 1980s government and foreign drought relief agencies provided most of the food, delivered by truck every month and distributed in bags from a central storehouse. During some periods there was so much available that surplus was often fed to dogs. Given the year-round availability of food relief and the need to stay close to the main villages to receive it, there was little incentive for groups to disperse in the rainy season; in this way the aggregation phase became extended through the year.

Another economic imperative that affected the form and content of the Public/Private phases was the Ju/'hoansi relationship with neighbouring settled cattle herders. From as early as 1900 some Ju had been involved in boarding cattle for wealthy Tswana, in a loan cattle arrangement called *Mafisa*, widespread in Botswana.[10] By 1973 about twenty percent of Ju families had some involvement as mafisa herders and the number grew through the 1970s. Families boarding cattle could not forage as before; the need to tend and water cattle kept them "tethered" to permanent water or to large seasonal water points.

In theory mafisa holding was a stepping stone to becoming owners of cattle and managing viable herds, but this ideal outcome rarely occurred. In the 1980s people had become bitter about mafisa; they complained that cattle promised in payment for services rendered — usually one female calf per year — were not being paid, and without these beasts it was difficult to start one's own herd. Coupled with the withdrawal of government rations in the late 1980s, the lack of mafisa had soured some Dobe Ju/'hoansi about their overall prospects in Botswana.

The people saw what was happening in Namibia where the Nyae Nyae Development Foundation was helping Ju/'hoansi to drill boreholes and obtain cattle.[11] Dobe area Ju wanted their own boreholes, and an

---

[10]Robert Hitchcock, *Kalahari Cattle Posts* (Gaborone: Government of Botswana, 1977).

[11]See Megan Biesele and Paul Weinberg, *Shaken Roots: The Bushmen of Namibia* (Johannesburg: EDA Publications, 1990); Megan Biesele, "The Ju/'hoan Bushmen: Indigenous Rights in a New Country," in *The State of the Peoples: A Global Human Rights Report on Societies in Danger*, eds. Mark S Miller/Cul-

overseas agency (Norwegian NORAD) was favourably disposed to financing the project. However the Botswana government took no action on borehole drilling preferring, it appeared, to allow the Ju mafisa herders to slip into a condition of more or less permanent dependency on their Tswana patrons.

However, the rapid growth of semi-permanent settlements based on herding did have at least one political advantage: consultation between formerly isolated groups became easier, and discussion of their perceived mistreatment at the hands of the Government became a frequent topic when people got together. In 1987 some Dobe people organized a movement to leave Botswana and cross the fence to their relatives in Namibia, and by 1993 some had actually made the move.

Another consequence of settlement and improved communication was the entrance of commercial traders into the area. Most brought a stock-in-trade that was heavy on alcohol and other non-useful commodities. However not all the traders were bent on simply exploiting the Ju and separating them from their meager cash. From 1986 on, a small parastatal organization, the *Kung San Works* purchased increasing volumes of Dobe Area crafts, primarily from Ju/'hoansi but also from Herero. This has had the effect of pumping considerable cash into the Ju economy, from a level of 400-500 Pula per month ($200-250) before the marketing scheme, to P5000-7000 ($2500-3000) per month at the peak of the scheme.

Unfortunately, there were not many opportunities for productive investment of the proceeds in infrastructure such as plows, bicycles, cattle, or horses. While some large stock were purchased, a distressing amount of cash was absorbed in buying beer, brandy, home brew materials, bags of candies, and the ubiquitous sugar, tea, and Nespray powdered milk.

The opening of schools and clinics was another major force towards sedentarization. When the first school opened at !Kangwa in 1973, some Ju parents responded quickly, registering their children, and scraping together the money for fees and the obligatory school uniforms. Most Ju however, ignored the school or withdrew their children when the latter objected to being forbidden to speak their own language on school grounds or to the (mild) corporal punishment that is standard practice in the Botswana school system. Also school attendance conflicted directly with the dispersal phase of Ju life when smaller groups scattered across the landscape. Later, when government feeding programs were instituted, dispersal was no longer a necessity. Yet, despite the efforts of parents, teachers and the school board to encourage attendance, and

---

tural Survival (Boston: Beacon Press, 1993), 33-39; and Richard Lee and Megan Biesele, "A Local Culture in the Global System: The Ju/'hoansi-!Kung Today," *General Anthropology* 1 (1994): 1-4 for a discussion of recent developments in Namibia.

despite the construction of a hostel for housing students, absenteeism at the !Kangwa school continued into the 1990s in the 40-60 percent range.

In spite of these obstacles at least four of the Dobe area students did go on to secondary school in the 1980s. However even for these students — the first to get this far in the educational system — the road has not been easy. It is an open question whether these and later graduates will return to participate in the public life of their home communities or seek their fortune elsewhere. For the large majority of Ju/'hoansi with none or little schooling, the job prospects were poor, and a life of odd jobs combined with heavy drinking was not uncommon. It was a bitter irony of underdevelopment that in the mid 1980s some Botswana youths were attracted to Namibia where jobs in the South African Army were the only ones available.[12]

Far more successful was the second and smaller of the two schools, at /Xai/xai, where a progressive headmaster wisely incorporated many elements of Ju/'hoansi culture into the curriculum, and was rewarded with strong parental and community support for the school and a low absentee rate. The /Gwihaba Dancers, a troup of /Xai/xai school-children, won regional and national cultural competitions and performed at Botswana's 20th Anniversary of Independence celebrations in 1986, thus entering the public life, not just of their community but of the nation as a whole.[13]

Given these changes, have the Ju/'hoansi abandoned the pattern of aggregation-dispersion and become frozen into a permanent state of "Public Life?" Happily, even in the 1990s, the Ju/'hoansi have not lost contact entirely with their former life in the bush. Small parties of foragers still go out for periods of days or weeks and still produce a significant portion of the food supply. However in the long run Dobe area Ju/'hoansi face serious difficulties. The shift to settled life in semi-permanent villages may well be irreversible, partly because overgrazing by cattle and goats has affected the productivity of the wild food resources, and partly because the desert which has been their larder is now being coveted by powerful outside interests.

Although several decades of mineral exploration have failed to turn up economic ore bodies or the diamond pipes so prevalent elsewhere in Botswana, other industries have been locally more successful. Since 1975 wealthy Tswana have been expanding beef cattle production by

---

[12]Richard Lee and Susan Hurlich, "From Foragers to Fighters: The Militarization of the !Kung San," in *Politics and History in Band Societies,* eds. E Leacock and R Lee (Cambridge: Cambridge University Press, 1982): 327-45; and Gina Bari Kolata, "!Kung Bushmen Join the South African Army," *Science* 211 (1981): 562-64.

[13]Lee, *The Dobe Ju/'hoansi*, 177-81.

forming borehole syndicates to stake out ranches in remote areas. With 99 year leases which can be bought and sold, ownership is tantamount to private tenure. By the late 1980s the borehole drilling was approaching the Dobe area. If the Dobe Ju do not receive overseas help to form borehole syndicates soon, they may be permanently excluded from their traditional foraging areas by commercial ranching.

The Dobe Ju/'hoansi have entered into a world in which the ratios of the public and private life have been reversed. Formerly they would spend most of the year dispersed at seasonal waterholes and only a few weeks or months aggregated into large groupings. Today they live in aggregations of seventy-five to three hundred people for most of the year, with only the more mobile dispersing in the summer months to temporary camps.

More importantly, the public life they do experience is largely not of their own making. It is a world dominated by outside institutions: schools, clinics, food relief programs, and craft production are run by people who are both ethnically distinct and from outside the community. While many of the issues discussed around the evening fires are cast in local terms, the locus of decision-making power lies elsewhere.[14] In this respect the formerly autonomous Ju/'hoansi have indeed come to resemble rural Third World poor elsewhere. But as long as links to the bush remain viable their assimilation into the ranks of the dispossessed will be incomplete.

It is worth asking whether there are points of articulation between the Maussian discourse on Public and Private discussed here and the use of the same trope in the anthropology of gender. The utility of the feminist reading of the public/private split is borne out by the Ju/'hoansi material. In a famous series of papers Patricia Draper[15] has documented the changes in women's status relative to men as the Ju/'hoansi have abandoned nomadic hunting and gathering and adopted sedentary ways. First, she notes the confinement of formerly-mobile women to the area around the homestead, while the men continue to range widely as they herd livestock. Women thus become dependent on their menfolk for information about government, commerce, and the wider world. Second, child-rearing practices change, with female children assigned tasks associated with women's domestic work and boys the more prestigious work related to livestock. Third and probably most important, as their world opens up, the Ju/'hoansi are coming strongly under the influence

---

[14]For an important discussion of this point see Robert Hitchcock and John D Holm, "Bureaucratic Domination of Hunter-Gatherer Societies: A Study of the San in Botswana," *Development and Change* 24 (1993): 305-38.

[15]Patricia Draper, "!Kung women: Contrasts in Sexual Egalitarianism in the Foraging and Sedentary Contexts," in *Toward an Anthropology of Women*, ed. Rayna Reiter (New York: Monthly Review Press, 1975), 77-109.

of the dominant and strongly patriarchal Tswana national culture. Tswana language, power relations, and gender roles become the norm to be aspired to, lessening the strength of the far more egalitarian gender roles that have been documented for the Ju/'hoansi.[16]

Returning now to our point of departure, the major significance of Mauss's insight lies in this: for nomadic foraging peoples, aggregation was not a "normal" condition and could not be sustained indefinitely. "Public" aggregations had to alternate with "private" dispersions if the society were to remain viable. This, argued Mauss, was the human condition before the origins of food production and the rise of the State. But with the emergence of the latter came a veritable revolution in human affairs. The treadmill of social and technological evolution made possible ever longer periods of residence in ever larger aggregations, until the sedentary and maximally aggregated state of affairs became humankind's permanent condition. The press of sheer numbers has made it impossible to ever return to the dispersed phases of the annual cycle. For most of the world the social and medical problems resulting from living at close quarters at high densities for long periods — which foragers had successfully avoided by annual dispersions — could no longer be bypassed: disease, crowding, unrest, and squalor have ecome the lot of a large portion of humanity.

Only a distant echo of the once universal aggregation-dispersion pattern can perhaps be discerned in the universal practice in advanced industrial societies of allocating workers two weeks to two months vacation time. Is this perhaps tacit recognition in the very machinery of Capitalism of the human spirit's need for "dispersal?"

---

[16]In addition to Draper, "!Kung Women" on this point see Lee, "Politics, Sexual and Non-Sexual" and Shostak, *Nisa: The Life and Words of !Kung Woman*.

RETHINKING TRADITIONAL ANTHROPOLOGY: POSTMODERN THEORY ENCOUNTERS THE "OTHER"

facilitated by

Richard Lee

September 30, 1994

Colloquium readings:

Lee, Richard. "The 'Primitive,' the 'Real,' and the 'World System:' Knowledge Production in Contemporary Anthropology." *University of Toronto Quarterly* 61, no. 4 (Summer 1992) : 472-88.

_____."Demystifying Primitive Communism." In *Dialectical Anthropology: Essays in Honor of Stanley Diamond*. Vol. 1. Christine Gailey ed., 73-94. Gainesville: University of Florida Press, 1992.

_____. "The Primitive as Problematic." [Guest Editorial] *Anthropology Today* (December 1993): 3-5.

_____. "The Impact of Development on Foraging Peoples: A World Survey (1981)." In *Tribal Peoples and Development Issues*, ed. John Bodley, 181-90. Mountain View, CA: Mayfield, 1987.

Dr Richard Lee found his interests in the construction of anthropology and in epistemology evoked before this lively colloquium even began. Lee began his presentation with an admission that he had been called to defend his use of the term "savage" in the colloquium's original description. He recounted the objections he had received from a native spokesperson to the title "The Ignoble Savage Revisited: Postmodern Theory Encounters the Other," and his explanation of the ironical intent of his deployment of the phrase. Lee's account of the productive discussion that followed these distinct statements of position forcibly illustrates the political complexity of his task, as well as his willingness to confront the ideological dimensions of the discipline in which he

works. In this manner the "prehistory" of the colloquium powerfully anticipated the discussion that took place in this afternoon session.

The colloquium investigated a number of anthropological debates resulting from current postmodern theory. Until recently, much anthropological work has been based on the premises that there is a distinction between observers and subjects — a fast cultural line drawn between "us" and the "other". Postmodern theory has shown this traditional division to be misleading and reductive; Lee contends that the discipline must also admit its reductiveness and find some means of acknowledging and profitably exploring the permeability of these categories.

Such declarations of non-otherness naturally have enormous implications for the collection and organization of anthropological materials. Much of the colloquium discussion revolved around means of sorting out the conflicting claims of revisionist and constructivist anthropologists and older anthropological theories and processes.

Core aspects of postmodernity, such as the notion that knowledge is socially constructed and that theories rise from master discourses, were set against the assumptions of established methodology and the rhetorical claims of empirical evidence. The work of Alison Wyley was advanced as a sympathetic account of postmodernism's impact upon archaeology, especially as regards the role of gender in archaeological investigation, and Donna Harraway's *Primate Visions* commended for its examination of the way anthropological research is used to construct master narratives.

Dr Lee's introduction was followed by a discussion of the historical construction of the terms "primitive" and "savage". It was noted by one participant that the *Oxford English Dictionary*'s definition of "savage" encompasses the medieval sense of the word as signifying a sylvan being, a notion of "other" that was carried to the New World with European exploration. An argument was advanced for preserving a term which has a clear relation to the foundation of anthropology as a discipline. Dr Lee feels that "savage" or "primitive" are categorizations that can only be used ironically; their rehabilitation is not possible (nor indeed desirable) and the terms are useful solely for a critique of subject position. In the course of discussing the etymology of "savage" another significant point about medieval alterity emerged. It was noted that while the sylvan figure or wild-man of medieval literature is *superficially* a figure of the other, he stands more importantly as a manifestation of the inner qualities of the questing hero. The wild-man is therefore a projection of relatedness, and as such illustrates an important aspect of postmodernist theory. Lee responded enthusiastically to this point, adding that postmodernism's position is not a denial of difference but rather an acknowledgement that difference is generated within particular structures. He cited the example of indigenous communities transformed by a capitalism not of their making.

It was observed that a tension exists between the social construction of the other and an older view in which the "other" is a traditional part of life unaffected by change. Native communities, for instance, speak a language that draws on the past but now must address situations in which power is altered or altering. It was argued that such communities observe past practices, but what might be called "tradition" does not march on in a simple sense. Lee acknowledged the importance of finding a middle ground between this sense of tradition and a revisionist view that what remains of many communities is fragmented by capitalism, and that people in these communities are changing in radical ways. Twenty years ago, Lee noted, young people left the reserves in great numbers, a pattern that is beginning to reverse itself in the wake of a new cultural rediscovery among native youths. Seeing value in a culture allows the young to build upon and reconstruct their culture for themselves.

Postmodernity is often identified with the loss of a distinct sense of place. This geographical bereavement may be related to a loss of localization and local culture in the global system. The rupture of links between persons and places, Lee feels, may be viewed as a characteristic of both modernity and postmodernity, and a phenomenon of late twentieth-century life. In this context Lee cited the work of Wes Jackson, a "visionary agricultural economist," who determined the number of generations that were required to pass before a farmer could be considered "native" to a place.

The discussion next turned to the question of non-specialists' response to postmodernity's revision of anthropological practice. It was suggested that the idea that anthropologists interpret or construct cultural fictions may be acceptable to other academics, but would likely shock the general public. The consumer of anthropological and archaeological materials assumes, it was claimed, that they are receiving hard data; data that has the same epistemological validity as information gathered by a physicist. A situation such as a land-claim case is one in which the need for incontrovertible archaeological and anthropological facts seems obvious. Lee stated that it was possible to have knowledge that was not just of a provisional or contingent nature, but that the premises of the discipline and the deployment of this know-ledge still required questioning. One participant also observed that the phrase "cultural fictions" was not intended to trivialize the process of constructing a narrative, but rather signifies something that is powerful in its own right. Postmodernism allows for the incursion of literary theory into scientific realms. Although disciplinary lines are productively breached in this cross-borrowing, it was deemed advisable to keep the categories of fiction and ethnography straight.

The discussion was subsequently directed to the cultural and material issues surrounding the Alert Bay Museum in British Columbia. The recently-formed museum exhibits masks and other artifacts that had been confiscated by the RCMP during a period in which the potlatch

ceremony was banned. It also houses a workshop for native carvers and craftspeople that has become a popular tourist destination. The project at Alert Bay calls up many questions about the mediation of artifacts and their originating cultures through the institutional agency of a museum. One participant noted the paradox of the artifacts' preservation being linked to repressive governmental legislation. The institutional interventions that shape this production and display of artifacts were considered in detail, as was the role played by art in the expression of communal identity. Lee feels that what might be termed "identity politics" has replaced class and union politics. Ethnicity has become significant and clearly marketable in the present, perhaps as a response to the depersonalization and loss of a sense of place associated with late capitalism.

C S Matheson
Department of English Language and Literature
University of Windsor

CHALLENGING THE PUBLIC/PRIVATE DIVIDE: WOMEN, WORK, AND FAMILY

Susan B Boyd

One of the key contributions of feminism to epistemological inquiry, and arguably one of the most disturbing, is the challenging of concepts that previously have been taken for granted.[1] I want to discuss the challenges that feminists have raised to a particular dichotomy that characterizes dominant western ways of thought — the so-called Public/ Private Divide — that is, the division of life into apparently opposing spheres of public and private activities, and public and private responsibilities. This opposition or dichotomy can be used to describe various phenomena such as the distinction between state regulation and private economic activity. However, I will mainly address the version of that Divide that corresponds to the division between work and family that seems to be embedded within dominant Canadian society. Others have called this phenomenon the "division of labour by sex" or the "sexual division of labour."[2]

Lately many feminists have turned their attention away from issues of family and work and towards questions of language — for instance, whether there is a feminine language that we can discover[3] — as well

---

[1]This paper was presented at the University of Windsor, Humanities Research Group, November 8, 1994. An earlier version was presented at the University of Manitoba Faculty of Law, February 2, 1994. The research for this paper was supported by a grant from the Social Sciences and Humanities Research Council of Canada under the strategic theme "Women and Change." Research assistance was provided by Gillian Calder and Michaela Donnelly. Thanks to Joan Brockman, Dorothy Chunn, and Claire Young for comments, and to the audience at the University of Windsor who gave me ideas for developing the paper.

[2]Pat Armstrong and Hugh Armstrong, *The Double Ghetto: Canadian Women and Their Segregated Work*, 3d ed. (Toronto: McClelland & Stewart, 1994).

[3]Hélène Cixous and Catherine Clément, *The Newly Born Woman* (Minneapolis: University of Minnesota Press, 1986); Luce Irigaray, *Ce sexe qui n'en est pas un* (Paris: Minuit, 1977); and Xaviere Gauthier, "Existe-t-il une écriture de femme?" *Tel quel* 58 (Summer 1974): 95-97.

as towards inquiries about the way that female bodies are disciplined in modern societies.[4] These issues are important and reflect the influence that postmodernism, poststructuralism, and discourse analysis have had on feminism and legal studies. But in exploring these issues, fundamental issues of how we negotiate daily conflicts between work and family responsibilities — as individuals and as a society — may get left behind. In a sense these are old questions for feminists, and I think that many are frustrated that, despite considerable efforts at challenging the work/family divide, the situation almost seems worse today than it was two decades ago. Many feminists have therefore turned their attention elsewhere. I want to make sure that we do not lose sight of these fundamental issues that are so connected to the way we organize our social and economic lives.

What is the Public/Private Divide?

A considerable body of literature now exists on the Public/Private Divide.[5] Essentially the argument runs this way. Over the past couple of centuries, with accelerated industrialization of western capitalist societies, people's lives have increasingly been divided into public and private spheres at both material and ideological levels. Whereas household units previously were units of production with both men and women (and often people we might now regard as "non-family" members as well) participating in work within these units, the spheres of home/family and paid work became physically and conceptually more

---

[4]Emily Martin, *The Woman in the Body: A Cultural Analysis of Reproduction* (Boston: Beacon Press Books, 1987); Zillah R Eisenstein, *The Female Body and the Law* (Berkeley: University of California Press, 1988); and Nancy Fraser, *Unruly Practices: Power, Discourse and Gender in Contemporary Social Theory* (Minneapolis: University of Minnesota Press, 1989).

[5]For example: Frances E Olsen, "The Family and the Market: A Study of Ideology and Legal Reform," *Harvard Law Review* 96 (1983): 1497-1578; Margaret Thornton, "The Public/Private Dichotomy: Gendered and Discriminatory," *Journal of Law and Society* 18, no. 4 (1991): 448; Katherine O'Donovan, *Sexual Divisions in Law* (London: Weidenfeld, 1985); Ruth Gavison, "Feminism and the Public/Private Distinction," *Stanford Law Review* 45 (1992-1993): 2-45; Carole Pateman, "Feminist Critiques of the Public/Private Dichotomy," in *Private and Public in Social Life*, Stanley Benn and Gerald Gaus, eds. (London: Croom Helm, 1983), 281; and Hester Lessard, "The Idea of the 'Private:' A Discussion of State Action Doctrine and Separate Sphere Ideology," *Dalhousie Law Journal* 10 (1986): 107. See also Eli Zaretsky, *Capitalism, the Family and Personal Life* (New York: Harper & Row, 1976); Linda K Kerber, "Separate Spheres, Female Worlds, Woman's Place: The Rhetoric of Women's History," *The Journal of American History* 75, no. 1 (June 1988): 9-39.

separate in the nineteenth and early twentieth centuries (depending on which geographical region one is examining).[6] This phenomenon and these spheres were highly gendered, although clearly women and men travel in and out of both spheres.

If we can for discussion purposes keep the two spheres conceptually separated (although in practice the relationship is more fluid), we can see gender-based patterns. Men have been present in greater numbers in the public sphere of paid work, particularly after the protective legislation of the nineteenth and early twentieth centuries, and also tend to dominate this sphere. In the private sphere of family, on the other hand, although women tend to be held responsible for tasks in this sphere such as childcare and domestic labour, they do not dominate in the sense of being able to exercise authority.[7] Indeed, research on violence against women (and children) shows that there is something about the private sphere that seems to allow male violence to occur there, too often with impunity.[8] Masculinity is constructed in terms of public sphere indicators of economic and material success, as well as heterosexual power; whereas femininity is constructed in terms of sexual objectification — the capacity to be the object of men's sexual desire and to ensure that their needs are met, in the private sphere and arguably also the public.[9] As Mandell puts it, "the gradual separation of the private and the public led to a new emphasis on masculinity as measured by the size of their pay cheques." In contrast, women were

---

[6]Karen L Anderson, "Historical Perspectives on the Family," in *Family Matters: Sociology and Contemporary Canadian Families*, eds. Anderson et al. (Toronto: Methuen, 1987), 21. Anderson also points to literature dispelling the myth that in former times, Canadians lived in two-generation settings, or that the family was free from hierarchy and exploitation along gender lines. See also Nancy Mandell, "Family Histories," in *Canadian Families: Diversity, Conflict and Change*, eds. Nancy Mandell and Ann Duffy (Toronto: Harcourt Brace, 1995), 17.

[7]Ann Duffy, "Struggling with Power: Feminist Critiques of Family Inequality," in *Reconstructing the Canadian Family: Feminist Perspectives,* eds. Nancy Mandell and Ann Duffy (Toronto: Butterworths, 1988), 111.

[8]Fifty-four percent of women have experienced some form of unwanted or intrusive sexual experience before the age of sixteen. Twenty-seven percent of women have experienced physical assault in the context of an intimate relationship. The Canadian Panel on Violence Against Women, *Changing the Landscape: Ending Violence — Achieving Equality* (Ottawa: Minister of Supply and Services Canada, 1993).

[9]Marion Lynn and Eimear O'Neil, "Families, Power, and Violence," in *Canadian Families: Diversity, Conflict and Change,* eds. Nancy Mandell and Ann Duffy (Toronto: Harcourt Brace, 1995), c. 9.

subject to the "ideological cult of domesticity."[10]

In actual practice, the dividing line between the two spheres is wiggly, slippery, and therefore hard to draw. For example, some paid work is done in the home.[11] In fact, some authors have begun to dismiss the conceptual utility of the public/private divide as a result.[12] However, in my view, the indeterminacy of the dividing line is due to the fact that it is, of course, not a real line, but rather an ideological construct that often shifts. It does have some material basis, as do all ideologies — with industrialization did come the notion of "going out to work." However it shifts in response to economic changes, and factors such as race and class. For example, women of colour arguably have been "permitted" to be present in the sphere of paid work to a greater extent than white middle-class women. First Nations societies may not have been organized along the lines of the public/private divide at all. This fact does not detract, however, from the *dominant* construction of the world in terms of public and private with which I am concerned.

As well, the two spheres exist not so much in opposition to each other, but rather *in connection with* each other.[13] What we think of as the public sphere of law and social policy, for example, has a great deal to do with how our private lives are structured and experienced. In turn, ideologies related to "private lives" in families, for example, inform the content of (public) laws and social policies.[14]

Something about the power that men have derived from dominance in the public sphere — even though for many men, this dominance does not actually accord them much power or control over their work — means they have, until very recently, been deemed legally to be head

---

[10]Mandell, "Family Histories," 35.

[11]Armstrong & Armstrong, *The Double Ghetto*; but notably it tends to be done by women not men.

[12]Nikolas Rose, "Beyond the Public/Private Division: Law, Power and the Family," *Journal of Law and Society* 14 (1987): 61-76; Cherise Cox, "Anything Less is Not Feminism: Racial Difference and the WMWM," *Law and Critique* 1, no. 2 (1990): 237; Kay Goodall, "'Public and Private' in Legal Debate," *International Journal of Sociology of Law* 18 (1990): 445; and Faith Robertson Elliot, "The Family: Private Arena or Adjunct of the State," *Journal of Law and Society* 16 (1989): 443. Joan Acker has noted the problem of working from conceptual dualisms such as the public/private divide: "The Problem With Patriarchy," *Sociology* 23, no. 2 (1989): 235-39.

[13]Rose, "Public/Private Division," 61-76.

[14]Dorothy E Chunn, *From Punishment to Doing Good* (Toronto: University of Toronto Press, 1992); and Jane Ursel, *Private Lives, Public Policy: 100 Years of State Intervention in the Family* (Toronto: Women's Press, 1992).

of the household in heterosexual families.[15] And they have exercised considerable power in this domain, over both women and children. As well, there is something about the way the public sphere is organized — arguably along the lines of a presumed male lifestyle — that *relies* on a particular way of organizing the private sphere.[16] To be concrete, the very ability of men to function freely in the public sphere of paid work assumes that someone, usually a woman, is doing their domestic labour, preparing their food, cleaning their sheets, and, perhaps most importantly, raising the next generation of labourers.

Some men (and increasingly some women) earn enough money to be able to purchase some of these services in the market — ie housekeepers — but normally the reproductive function of raising children is expected to be done by that man's female partner. Notably, however, labour that is viewed as "women's work" or domestic labour tends to command lower compensation than that viewed as "men's work," even if it is performed by a formally recognized employee (such as childcare worker, housekeeper).[17] And women do most of the "caring" work in the labour force, such as health services, child care, and social welfare.[18] The public/private divide thus reproduces itself also within each of the two spheres.

So women's labour — unpaid or underpaid labour it must be noted — in the private sphere supports the ability of their male partners to enter the labour force, work long hours, be uninterrupted by telephone calls concerning the domestic sphere, and so on. In fact, Carole Pateman argues that the sexual contract between men and women — under which women apparently voluntarily agree to play these and other related roles — supports the ability of men to succeed in the public sphere and in turn to dominate it.[19]

The role that law plays in constructing this public/private divide was clearer in the nineteenth century. At present, it may operate at more of an ideological level than an instrumental one. In the nineteenth century, for example, women were constrained from entering high profile public sphere professions such as law and medicine. The justification given by many judges for excluding women from the professions was that

---

[15]Generally Carole Pateman, "Patriarchal Confusions," in *The Sexual Contract* (Cambridge: Polity Press, 1988), 19-38.

[16]Susan Moller Okin, *Justice, Gender and the Family* (New York: Basic Books, 1989), 110-33.

[17]Donna S Lero and Karen L Johnson, *110 Canadian Statistics on Work and Family* (Ottawa: Canadian Advisory Council on the Status of Women, 1994), 38.

[18]Lero and Johnson, *110 Statistics*, 5.

[19]Pateman, *The Sexual Contract*.

women's places were in the home caring for their husbands and children.[20] These justifications tended to romanticize the lives of women in the private sphere, underestimating the labour performed there, and sentimentalizing women's work and roles in the family. To read these judgements, one would think that no work was done in the home, which in turn exacerbates the perceived divide between work and family. The justifications also asserted a particular form of womanhood as normative, which tended to be white, delicate, of a certain class, protected, and nurturing.

In fact, race and class interrupt the generality of the statement that women were constrained from entering the public sphere. Women of classes and races "other" than those of men in the professions, for example black women who were slaves in Canada and the United States, and working class women,[21] were not visible in the judgements that excluded women from the professions.[22] These women were expected to work, and indeed, to do heavy work at times. Many working class women and women of colour worked in both public and private spheres. They often took in boarders, did sewing, laundry, and cleaning for other women. Indeed the labour of these women either in the homes of women of the middle and upper classes, or for the households of these women, supported the ability of middle and upper class women to be viewed as "protected" in the private sphere. It also supported the ability of middle and upper class women to participate in limited ways in the public sphere, creating the new welfare state, doing good works, and so on.[23]

Gendered dynamics were thus cross-cut by racialized and class-based

---

[20]T Brettel Dawson, *Women, Law, and Social Change: Core Readings and Current Issues* (North York: Captus Press, 1993), chapter 3(A) on Legal Personhood.

[21]Mandell, "Family Histories," 28-31; Angela Davis, "The Legacy of Slavery: Standards for a New Womanhood," in *Women, Race and Class,* ed. Angela Davis (New York: Vintage Books, 1983); Martha Minow, "Forming Underneath Everything That Grows: Toward a History of Family Law," *Wisconsin Law Review* 4 (1985): 819-97.

[22]It is also significant that men of colour and First Nations men were also kept out of the professions for some time; this phenomenon of exclusion was not based on gender alone. See Joan Brockman, "Not by Favour But by Right: The History of Women and Minorities in the Legal Profession in British Columbia" in *Essays in the History of Canadian Law, Volume VI, British Columbia and the Yukon,* eds. John P S McLaren and Hamar Foster (Osgoode Society, forthcoming).

[23]Chunn, *From Punishment to Doing Good*; Ursel, *Private Lives, Public Policy*; and Mariana Valverde, *The Age of Light, Soap and Water: Moral Reform in English Canada 1885-1925* (Toronto: McClelland & Stewart, 1991), 29-30.

social relations, so that we cannot make overly generalized statements about the "experience" of women in the public and private spheres. The experience of some women who live in communities and cultures that do not operate along these lines, such as First Nations women, may not be comprehensible at all in terms of the public/private divide. Extended family structures were supported by an economic infrastructure that was based on reciprocity, sharing, and production for the subsistence of the community.[24] Nonetheless, at the level of *dominant* ideologies, a particular model of female behaviour was reproduced through law and held out as normative. The ideological power of this model in constructing social and legal policies is relevant to women of all classes and races, although its impact varies according to class, race, and other factors such as sexual orientation.[25]

In terms of constructing the private sphere, husbands were accorded significant "privatized" power by laws on marriage and family relations, to the extent that the chastising of wives and children by violent measures was condoned.[26] Married women's legal personalities were dissolved into that of their husbands. Until very recently, and arguably still, this logic — that the private sphere of family relations should not be interfered in by law or state — significantly impeded efforts to eradicate violence against women in the home. Until the sexual assault law reforms of the early 1980s, a man was legally able to rape "his" wife.[27] By its very refusal to enter the private sphere to address problems of power abuse, law and state left an unequal power dynamic in place.[28] When law and state did interfere, all too often it was to try to enforce or re-establish "correct" gender relations in families viewed as being

---

[24]Tania Das Gupta, "Families of Native Peoples, Immigrants, and People of Colour," in *Canadian Families*, eds. Nancy Mandell and Ann Duffy (Toronto: Harcourt and Brace, 1995): 145; Ron G Bourgeault, "Race, Class and Gender: Colonial Domination of Indian Women," in *Race, Class, Gender: Bonds and Barriers*, eds. Jesse Vorst et al. (Toronto: Society for Socialist Studies & Garamond, 1991), 88-117.

[25]Susan B Boyd, "Some Postmodernist Challenges to Feminist Analyses of Law, Family and State: Ideology and Discourse in Child Custody Law," *Canadian Journal of Family Law* 10 (1991): 79, 100-102.

[26]Constance B Backhouse, "Pure Patriarchy: Nineteenth Century Canadian Marriage," *McGill Law Journal* 31 (1986): 264-312.

[27]S.C. 1980-81-82, c. 125, s. 19 was an amendment which eliminated spousal immunity for offenses of sexual assault by adding what is now section 278 of the 1995 Criminal Code.

[28]Fran Olsen, "The Myth of State Intervention in the Family," *Michigan Journal of Law Reform* 18 (1985): 835.

"deviant," often poor families or immigrant families,[29] as well as First Nations families.[30] In addition, until the late nineteenth century, upon marriage women lost certain rights to property, thereby curtailing their ability to be economically independent.[31] Since some of these impediments did not apply to single women, the central place of marriage and family in women's unequal status is clear. An example is that many jobs that were open to single women, such as teaching, were lost to them if they got married, until well into the twentieth century.[32]

Many may say that this picture I have painted is no longer valid; that it may have described life until perhaps the 1970s, but since then these "legislated" gender roles have diminished; use of daycare has increased, men are sharing the domestic load, and so on. However, the statistics and studies are not so clear about this. I will now argue that the public/private divide between work and family is not qualitatively different than that I have described. It has definitely shifted and has been glossed over by the increasing participation of women in the labour force, increasing unemployment of men, the fragmentation or casualization of the labour force in the name of "flexibility," and increasing frustration of everyone with life in the late twentieth century. But it lives on.

Legal Changes to Gender-Based Assumptions Regarding Work and Family

The problems of negotiating the work/family conflict appear in many ways to be worse today than some years ago. How can this be, one may well ask? Many efforts have been made over the course of this century to change law's role, both in impeding women's ability to enter the labour force and in relegating women to a somewhat powerless position within the family, despite her key functions there. Formal barriers to entry into the labour force were largely eliminated for women by the mid-twentieth century, partly a result of women's participation in the labour force

---

[29]For example Dorothy Chunn, *From Punishment to Doing Good*; Valverde, *Age of Light*, 25, 104-128.

[30]Patricia A Monture, "A Vicious Circle: Child Welfare and the First Nations," *Canadian Journal of Women and the Law* 3, no. 1 (1989): 1-17; Marlee Kline, "Complicating the Ideology of Motherhood: Child Welfare Law and First Nation Women," *Queen's Law Journal* 18, no. 2 (1993): 306-42.

[31]Margaret McCaughan, *The Legal Status of Married Women in Canada* (Toronto: Carswell, 1977).

[32]Alison Prentice et al., *Canadian Women: A History* (Toronto: Harcourt Brace Jovanovich, 1988), 130, 232. Note that before the mid-19th century, this was not so. See also page 224 regarding the federal bureaucracy.

during World War II.[33] Less formal barriers such as attitudes that women were not suited to certain jobs were tackled through employment equity and affirmative action.[34] Assumptions that women should be paid less than men for the same jobs, due to the fact that they were just earning a bit of extra money to supplement a husband's income, were tackled through equal pay legislation.[35] Assumptions that typically female jobs such as secretarial work should be paid less than typically male jobs such as janitorial work were tackled through pay equity schemes.[36] Maternity leave was instituted to offer women the opportunity to bear children without losing jobs.[37] Not only is maternity leave in place, but now parental leave can be taken by fathers or shared with mothers.[38] These changes have been partial and erratic across Canada in their introduction and effect; they have been controversial; and it is not clear that they have been effective for all women.[39] They may have mainly benefited

---

[33]*Canadian Women*, 295-317. War time opportunities for women broke down formal barriers, and in fact some of the early equal pay legis-lation emerged in the 1950s. Although there were strong pressures exerted on women in the post-war period to (re)assume traditional roles, more women were pursuing work in order to maintain a standard of living in an increasingly consumer-focused society. See page 314.

[34]Employment Equity Act R.S.C. 1985 (2d Supp.) c.23.

[35]The first such legislation was the Ontario *Female Employees Fair Remuneration Act*, S.O. 1951, c. 26. In 1956, the federal government and Manitoba passed legislation, (in 1956) Alberta in 1957 and New Brunswick in 1961. Québec was recalcitrant until 1975. See T Brettel Dawson, ed., *Relating to Law: A Chronology of Women and Law in Canada* (North York: Captus Press, York University, 1990), at 63.

[36]Pay Equity Act S.N.B. 1989 c.P-5.01; The Pay Equity Act C.C.S.M. c. P-13. (1985); Pay Equity Act R.S.N.S. 1989 c. 337; Pay Equity Act R.S. P.E.I. 1988 c. P-2.; Human Rights Act S.B.C. 1984 c.22. s.7(1); Ontario Employment Equity Act S.O. 1993 c.35.

[37]Canada Labour Code R.S.C. 1985 c. L-2, am. 1993 c.42, s.26.

[38]Canada Labour Code, R.S.C. 1985 c.L-2, s. 204 - 206.1, as am. S.C. 1993 c.42, s.26; An Act to Amend the Unemployment Insurance Act and the Employment and Immigration Department and Commission Act, S.C. 1990, c. 40, ss. 14 & s. 9.

[39]See Judy Fudge, "Litigating Our Way to Gender Neutrality: Mission Impossible?" in *Just Wages: A Feminist Assessment of Pay Equity*, eds. Judy Fudge and Patricia McDermott (Toronto: University of Toronto Press, 1991), 60; Patricia McDermott, "Pay Equity in Canada: Assessing the Commitment to Reducing the Wage Gap," *Just Wages*, at 21; Patricia Evans and Norene Pupo, "Parental Leave: Assessing Women's Interests," *Canadian Journal of Women*

women who were already relatively privileged by their race or class status.[40] Nevertheless, they constitute a serious challenge to assumptions that women should not be in the paid labour force.

Law has also been invoked to deal with power issues in the private sphere. A key feminist slogan has been "The Personal is Political." This slogan symbolizes the calls for attention to be paid to the private or personal sphere and to address by law and other forms of state intervention abuses that prevail within that sphere. Challenges to the dividing line between public and private have been heeded to some degree. Sexual abuse, rape, child abuse — gendered patterns previously hidden in the private sphere — have all entered public discourse in a visible, if still problematic, fashion over the past two decades.[41] In addition, family laws have been changed to diminish patriarchal and heterosexist expectations that women should be the homebodies and men should bring home the bacon. Some effort has been made through matrimonial property laws to compensate women for their hitherto invisible and uncompensated labour in the private sphere. Women and men owe equal duties of support to one another. Ontario even recently considered including same-sex couples in family law, seemingly ridding family law of any gender-based (and heterosexist) stereotypes at all.[42] This proposal was however defeated when put to a free vote in the legislature. More married women and women with young children are in the labour force than ever before in history.[43] The discourse of child

---

and the the Law 6, no. 2 (1993): 402.

[40]For example, the wage gap appears to have almost closed for women and men with university degrees, in contrast to that which exists for the general population of full time workers. Other barriers may however exist. Aboriginal people, visible minorities and the disabled suffered much higher unemployment rates. See Eric Beauchesne, "Women University Grads Earn 'Just as Much' as Men," *Vancouver Sun*, 5 October 1994, A9.

[41]See Julian V Roberts and Renate M Mohr, eds., *Confronting Sexual Assault: A Decade of Legal and Social Change* (Toronto: University of Toronto Press, 1994).

[42]Ontario Bill 167; Ontario Law Reform Commission, *Report on the Rights and Responsibilities of Cohabitants Under the Family Law Act* (Toronto: Government Publications, 1993). See Susan B Boyd, "Expanding the 'Family' in Family Law: Recent Ontario Proposals on Same Sex Relationships," *Canadian Journal of Women and the Law* 7, no. 2 (1994): 545-563.

[43]Sixty-nine percent of mothers of children under six worked outside the home in 1991: Statistics Canada (1993) *The Daily* (March 2), cited in Linda Duxbury and Christopher Higgins, "Families in the Economy," in *Canada's Changing Families: Challenges to Public Policy*, ed. Maureen Baker (Ottawa: The Vanier Institute of the Family, 1994), 29.

custody laws has been changed to encourage the participation of men in children's lives more than traditionally has been the case.[44] These laws have had contradictory effects for women,[45] but the challenge to the ideological division between public and private is clear.

Work and Family in the Current Conjuncture

If we look carefully at the current social and economic context, we can ask to what extent these legal changes in the realms of work and family have fundamentally challenged the dominance of public/private ideology.

Stress levels are incredibly high among workers today, especially among dual career couples.[46] We hear from friends — especially those with children, but not exclusively — that they are always tired and have no leisure time. Women my age must often care for elderly parents, sometimes in addition to childcare responsibilities.[47] As well, it seems to be the women in these couples who are most stressed, particularly if they have children. Although men are not unscathed by this phenomenon, the burden of a "double day" of domestic labour and labour force work is borne primarily by women. Some authors have constructed a crisis in how family and work are being negotiated and advocated a return to "family values," without necessarily recognizing the gendered nature of that call, or the way in which it invokes heterosexuality as normality.[48] We read in Michael Valpy's columns in

---

[44]See for example, Divorce Act 1985 ss16(10), 17, no. 9 (maximum contact); see Susan B Boyd, "Child Custody Law and the Invisibility of Women's Work" *Queen's Quarterly* 96 (1989): 831; and Martha Albertson Fineman, *The Illusion of Equality* (Chicago & London: University of Chicago Press, 1991).

[45]See Dorothy E Chunn, "Feminism, Law, and Public Policy: 'Politicizing the Personal'," in *Canadian Families: Diversity, Conflict and Change,* eds. Nancy Mandell and Ann Duffy (Toronto: Harcourt Brace, 1995), 177; and Mary Jane Mossman, "Running Hard to Stand Still: The Paradox of Family Law Reform," *Dalhousie Law Journal* 17, no. 1 (Spring 1994): 5-34.

[46]Christopher Higgins, Linda Duxbury and C Lee, *Balancing Work and Family: A Study of the Canadian Private Sector* (London: National Center for Research, Management and Development, University of Western Ontario, 1993).

[47]Armstrong and Armstrong, *The Double Ghetto*, 122-25 (refer to these two generation caregives as the sandwich generation).

[48]See for example Roseanne Skoke, Liberal MP from Nova Scotia who recently has made extremely homophobic comments in the House of Commons, rationalized by her defence of "Canadian and Christian morals and values" and "the inherent rights and values of our Canadian families:" Tu Thanh Ha,

The Globe and Mail that schools are being forced to pick up the slack for parents who no longer have time to devote to their children. He locates the crisis in the "family." Others locate the problem in the inability of the workplace to accommodate those workers who have family responsibilities.[49] The debate too often seems to go back and forth between the two spheres without recognizing the interconnections between them.

It is incontrovertible that these phenomena are connected to the stress of negotiating the demands of work and family, and that the consequences are highly gendered. Women encounter more barriers to entry into the labour force, especially in particular sectors. Although the rate of their labour force participation is clearly up,[50] due to economic necessity as well as choice, considerable barriers exist. Not least of these is the problem of locating quality childcare that is affordable. The rising numbers of women in the labour force reflect entry into industries and occupations that are characterized by low pay, low recognized skill requirements, low productivity, and low prospects for advancement.[51] Women take more time out of the labour force than men due to family responsibilities.[52] Women still earn only 71.8 cents for each dollar earned by men when full-time/full-year workers are studied;[53] and women work part time at a highly disproportionate rate.[54] Women are also still mainly employed in female job ghettoes, generally working *for* men. Women's

---

"Dissident Liberals Fight Bills on Gays," *The Globe and Mail*, 28 September 1994, A1.

[49]Shahid Alvi, *The Work and Family Challenge: Issues and Options* (Ottawa: Conference Board of Canada, 1994), 11.

[50]In 1991, well over half (fifty-eight percent) of all women aged fifteen and older were in the Canadian paid labour force, up from forty-five percent in 1976. They constituted forty-five percent of the total paid labour force: Lero and Johnson, *110 Canadian Statistics*, at 2.

[51]Armstrong and Armstrong, *The Double Ghetto*, 15.

[52]Lero and Johnson, *110 Canadian Statistics*, at 29. Also recently there has been an increase in the time that women take off for family reasons; the time that men take off has remained relatively static. See Ernest Akveampong, "Absences from Work Revisited," *Perspectives on Labour and Income* (Ottawa: Statistics Canada, 1992).

[53]Lero and Johnson, *110 Canadian Statistics*, 6. It is much lower when non full-time workers are taken into account.

[54]Nancy Z Ghalam, *Women in the Workplace*, 2d ed. (Ottawa: Statistics Canada, 1993), cat. no. 71-534E, Table 1.8, p. 21; and Ann Duffy and Norene Pupo, *Part-Time Paradox: Connecting Gender, Work and Family* (Toronto: McClelland & Stewart, 1992).

work is segregated in the public sphere in a manner that parallels the way that it is constructed in the private. Men are self-employed more than women although the rate of female self-employment is on the rise.[55] However, female self-employment is more complex, and not necessarily as positive as it seems, on a closer examination.[56] And the studies are also clear that although there is now a slightly higher rate of male participation in childcare and domestic labour in heterosexual households, women remain overwhelmingly responsible for these tasks.[57] In fact, women do two-thirds of the unpaid work in Canadian society.[58] Overall, it appears that women are negotiating the public-private divide of work and family at a more feverish rate than men, and have not yet become equal in the public world of paid work.

In addition, there are considerably more single mothers than single fathers and single mothers are disproportionately poor compared to single

---

[55]In 1991, 9.4 percent of women and 18.7 percent of men were classified as self-employed. Armstrong and Armstrong, *The Double Ghetto*, 53.

[56]Ibid., 53. Self-employment is often contract work. Women end up doing the same kind of work that they perform as employees, but often have lower pay, less job security, and fewer fringe benefits. Few employ other workers.

[57]Ninety-five per cent of women with children under 5 provide primary child care on a daily basis, compared to sixty-nine percent of men. In dual-earner couples in which both parents were employed full time, the majority of wives (fifty-two percent) retained all of the responsibility for daily housework (some of which is related to childcare), while twenty-eight percent had most of the responsibility. Equal sharing of housework was reported in ten percent of these families, and in the remaining ten percent, the husband had all or most of the responsibility. Lero and Johnson, *110 Canadian Statistics*, at 8. Armstrong and Armstrong, *The Double Ghetto*, 114. Many of the time-budget studies that these types of figures reflect do not take account of the constant responsibility that caregiving of children involves.

[58]Women account for 2/3 of volunteers providing care or companionship and 3/4 of those preparing or serving food: Doreen Duchesne, *Giving Freely: Volunteers in Canada* (Ottawa: Statistics Canada, Cat. 71-535, no. 4). See also Lynn Barr, *Basic Facts on Families in Canada, Past and Present*. Statistics Canada. Cat. No. 89-516. (Ottawa: Ministry of Industry, Science and Technology, 1993): 24. Women working outside the home spend 3.2 hours/day on average over a seven day week on household work; men spend 1.8 hrs. Nancy Zukewich Ghalam, "Women in the Workplace," *Canadian Social Trends* 28 (Spring 1993): 6. Women are estimated to be responsible for roughly 2/3 of the dollar value of unpaid household work, accounting for $13,000 per person worth of work annually per woman, compared to $7,000 per man. Chris Jackson, "The Value of Household Work in Canada, 1986," *Canadian Economic Observer* (June 1992), Statistics Canada Cat. No. 11-010, Section 3.1.

fathers, which means that children who are living with them are poor too.[59] Those who try to re-enter the labour force or education encounter sometimes insurmountable barriers due to lack of childcare, low wages, and so on.[60]

Even in the relatively privileged legal world, we hear of women lawyers leaving the practice of law, citing the impossibility of meeting the expectations of their firms and fulfilling their responsibilities at home. Studies of the British Columbia and Alberta bars show that there are negative economic and professional consequences associated with a woman's decision to have children, which are visited less often on male lawyers who have children.[61]

Most recently, and most controversially, the Canadian Bar Association Task Force *Report on Gender Equality in the Legal Profession* (the Wilson Report) has identified these problems and associated them mainly with the culture that surrounds work in the legal profession.[62] This culture has been shaped by male lawyers and predicated on their work patterns, which assume that they do not have significant family responsibilities. The public/private divide whereby workers are supposed to be able to rely on a woman at home who will take charge of domestic responsibilities, freeing the worker to go "out" to work, underlies this culture.

Among other things, The CBA Task Force found that:

a. the proportion of responsibility borne by women lawyers for their children is almost double that borne by male lawyers

b. women lawyers are much more likely to rely on paid child-care

---

[59]24.4 percent of single fathers live below the poverty line, while 61.9 percent of single mothers do: *Profiling Canada's Families* (Ottawa: Vanier Institute of the Family, 1994), 87.

[60]Carol Baines et al., eds., *Women's Caring: Feminist Perspectives on Social Welfare* (Toronto: McClelland & Stewart, 1991), 180-88.

[61]See the articles by Joan Brockman, "Leaving the Practice of Law: The Wherefores and the Whys," *Alberta Law Review* 32, no. 1 (1994): 116-80; "'Resistance by the Club' to the Feminization of the Legal Profession," *Canadian Journal of Law and Society* 7, no. 2 (1992): 47-92; "Bias in the Legal Profession: Perceptions and Experiences," *Alberta Law Review* 30, no. 3 (1992): 747-808; and "Gender Bias in the Legal Profession: A Survey of Members of the Law Society of British Columbia," *Queen's Law Journal* 17 (1992): 91-147.

[62]Canadian Bar Association Task Force on Gender Equality in the Legal Profession, *Touchstones for Change: Equality, Diversity and Accountability*, chaired by Hon. Bertha Wilson (Ottawa: Canadian Bar Association, 1993), 65.

givers than male lawyers — by a ratio of three to one

c. conversely, male lawyers can count on a spouse or spousal equivalent to be responsible for child care at a rate of approximately three times the spousal assistance available to women

d. these different levels of responsibility are reflected in the amount of time spent on child care: women lawyers spend more than double the time of men on child-rearing tasks

e. many more women report child-rearing responsibilities as a reason for leaving practice

f. although both men and women lawyers report stress as a result of competing demands of career and childcare, women report negative material effects in form of loss of income or reduced career opportunities.

g. women feel that the fact they had children has resulted in the questioning and testing of their commitment at work more than men.[63]

The CBA Task Force suggested various types of workplace accommodation such as alternative work schedules and assistance in child care. It then made some radical proposals on billing procedures in private practice, which have been highly controversial:[64]

1. law firms are to set realistic targets of billable hours for women with childrearing responsibilities pursuant to their legal duty to accommodate.

2. the reduced target of billable hours should not delay or affect eligibility for partnership nor affect normal compensation.

3. law firms should evaluate lawyers on a basis that gives due weight to quality of time expended rather than exclusively to the quantity.

Reaction to these proposals has been heated and mixed,[65] which is

---

[63]Canadian Bar Association, (1993), 67-68.

[64]Ibid., 99.

[65]Kathleen Keating, "Touchstones for Change: A Review," *The Advocate* 51, no. 6 (1993): 843-51. For a response, see Melina Buckley, "Touchstones For Change: A Response," *The Advocate* 51, no. 6 (1993): 853-59 and Natexa Verbrugge, "Letter: Re: Gender Issues in the Legal Profession: A Synopsis," *The Advocate* 52, no. 5 (1994): 788-90; and Margaret Wente, *The Globe and Mail* commentary, 27 August 1994, A2; Norma Priday, "Special Status for Lawyers Raising Families? Objection!," *The Globe and Mail*, 28 September 1994, A24. Response by Thomas G. Heintzman, President, CBA, "Letter to Editor: No Special Treatment," *The Globe and Mail*, 5 October 1994. See also Dianne Pothier, "A Comment on the Canadian Bar Association's Gender Equality Task Force Report," *Dalhousie Law Journal* 16 (1993): 484-93; and Mary Jane Mossman, "Touchstones for Change: Equality, Diversity and Accountability," *Canadian Journal of Women and the Law* 7, no. 1 (1994): 238-48.

not surprising. The proposals challenge the legal profession at a number of levels, including the monopoly that some lawyers have over legal work. Those who have jobs in the current highly competitive market must do more and more work in order to be paid well, thereby perpetuating a workaholic culture of legal practice. While this dynamic is not difficult only for women, it has particular implications for women in a society where caregiving and labour remain gendered.

Feminist Interventions in Litigation: Reinforcing the Public/Private Divide?

The gendered dynamics related to the public/private divide that I have described have not therefore been shifted fundamentally by the seemingly extensive legal changes to employment and family laws. Furthermore, despite the fact that some feminist research on the public/private divide and work/family conflicts has made its way into litigation and caselaw, it can be shown that we have not really succeeded in challenging the public/private divide.[66] I shall give two examples from recent litigation that reached the Supreme Court of Canada.

The first is that the evidence of Dr Patricia Armstrong, a prominent sociologist who has done perhaps the most important work on women and work in Canada, was fundamental to the argument of Beth Symes in a recent tax case.[67] At the trial level Symes argued, relying heavily on Armstrong's expert evidence, that lack of childcare was a significant impediment to women's participation in the labour force.[68] Therefore women should be able to claim childcare expenses as a deduction as a business expense under the *Income Tax Act*. This argument ultimately failed at the Supreme Court of Canada because the majority of judges (all the men on the court; with all women on the court dissenting) decided that even if it were true that women bear the social costs of childcare, it could not be shown that women actually *pay* for childcare and therefore should receive a tax deduction as a business expense.

Symes' argument was a significant, if flawed, effort to challenge the public sphere to at least indirectly fund childcare through the tax system. It presented a (limited) challenge to the notion that childcare is a private concern to be regarded as a "personal choice," contained and paid for solely within the private sphere of family. Instead it should be publicly

---

[66]Judy Fudge has written on this topic in the context of Charter litigation of the 1980s: "The Public/Private Distinction: The Possibilities of and Limits to the Use of *Charter* Litigation to Further Feminist Struggles," *Osgoode Hall Law Journal* 25 (1987): 485.

[67]*Symes* v *Canada (Minister of National Revenue)* [1993] 4 S.C.R. 695.

[68]*Symes* v *Canada (Minister of National Revenue)* [1989] 3 F.C. 59; [1989] 1 C.T.C. 476; 89 D.T.C. 5243; 40 C.R.R. 278; 25 F.T.R. 306.

recognized through the tax system, which effectively delivers public subsidies for certain activities.

However, Symes' argument has been shown to be problematic in a number of respects.[69] All reveal the inadequacy of the argument in addressing the fundamental conflict between paid work and family responsibilities and perhaps the limits of law in so doing. Even if Symes had succeeded, her win would only have benefitted the self-employed (who are the only tax payers who can deduct business expenses). In 1991, only 9.4 percent of women were classified as self-employed in Canada, whereas 18.7 percent of men were.[70] As well, the case tended to obscure another significant gender issue in the childcare scenario, which is that professional women like Beth Symes often rely on childcare by nannies, many of whom are women of colour from other countries allowed into Canada mainly for the purposes of performing private childcare, often under exploitative conditions (e.g. living in employers' home).[71] Symes' success would only have offered a band-aid to place over the difficulty that some women have in negotiating the work/family conflict. It would have left the public/private divide more or less intact, in failing to challenge the assumption that childcare is essentially an individual concern.

Another example of feminist research influencing case law, but in a limited fashion, is the *Moge* case decided by the Supreme Court of Canada in 1993.[72] This case involved a woman's claim that her ex-husband who had lived with her for many years should continue to pay support to her. LEAF (the Women's Legal Education and Action Fund) successfully intervened in this case to show the systematic undervaluing of women's domestic labour and childcare in the private sphere, and to connect this phenomenon to the so-called "feminization of poverty" — the fact that women are disproportionately represented among the poor

---

[69]Claire F L Young, "Child Care and the *Charter*: Privileging the Privileged," *Review of Constitutional Studies* II, (1994): 20 ; Claire F L Young, "Child Care: A Taxing Issue," *McGill Law Journal* 39 (1994): 539; Brenda Cossman, "Dancing in the Dark," *Windsor Yearbook of Access to Justice* 10 (1990): 223; Audrey Macklin, "Symes v M N R: Where Sex Meets Class," *Canadian Journal of Women and Law* 5 (1992): 498; and Nitya Iyer, "Categorical Denials: Equality Rights and the Shaping of Social Identity," *Queen's Law Journal* 19 (1993): 179.

[70]Armstrong and Armstrong, *The Double Ghetto*, 53.

[71]Audrey Macklin, "Foreign Domestic Worker: Surrogate Housewife or Mail Order Servant?" *McGill Law Journal* 37 (1992): 681.

[72]*Moge* v *Moge* 1 W.W.R.481 (S.C.C.)

in Canada.[73] In this case, the Supreme Court of Canada checked a trend in support law during the 1980s — which was to use support law to encourage self-sufficiency and a clean break between spouses rather than compensating for economic disadvantages suffered due to the assumption of unpaid labour (usually by women) in the private sphere.[74] The trend towards clean break theory had meant that support either was not awarded, or was terminated within a couple of years after separation or divorce in an effort to *make* women independent. This problematic trend illustrated the way that family law reforms in Canada since the 1970s assumed rather too quickly that women are now equal to men and can achieve economic self-sufficiency at more or less the same rate as men. *Moge* is of extreme importance in its recognition that this is just not so. One's ability to enter the public sphere and "succeed" in it is still highly gendered and we do not seem to have been able to legislate this problem away.

However, in another sense, the *Moge* case reinforces the ideological division between public and private responsibilities. Partly due to the inability of judicial decision-making to fundamentally shift the way that resources are allocated in society, the net result of the decision is that responsibility for women's poverty should rest wherever possible with a man with whom they have had a recognized relationship. In other words, responsibility will remain privatized, and gender relations of dependency reinforced.[75] Plus ça change . . . .

The Challenge

This brings me back to the question of why this gender divide between public/private is so entrenched. Why, for example, have even relatively privileged women such as women lawyers — who have years of education behind them and a significant economic advantage as well as skills — found entry into the practice of law so difficult? What is going on underneath all of these manifestations of crisis related to work and family? What role does law play?

---

[73]Almost 62 percent of female lone-parent families lived below the low income cut-off in 1991, up from 60.6 percent in 1990. See Household Surveys Division, *Income Distributions by Size in Canada, 1991* (Ottawa: Statistics Canada, 1992), cat. no. 13-207, 17-18, 22. See also *Women and Poverty Revisited*, A Report by the National Council of Welfare, Summer 1990.

[74]Martha Bailey, "*Pelech, Caron* and *Richardson*," *Canadian Journal of Family Law* 3 (1989-90): 615; Carol J Rogerson, "Judicial Interpretation of the Spousal and Child Support Provisions of the *Divorce Act* 1985 (Part I)," *Canadian Family Law Quarterly* 7 (1990-92): 155.

[75]Susan B Boyd, "(Re)Placing the State: Family, Law and Oppression," *Canadian Journal of Law and Society* 9, no. 1 (1994): 39.

I believe that, although feminists and lawyers have challenged the public/private divide and the gendered nature of the two spheres, we have not fundamentally challenged the way that society is organized along the lines of public and private.[76] We have seen that laws have encouraged women to enter the labour force and men to share domestic labour, or at least pay for it more at the point of separation or divorce. But can law persuade human beings to change their behaviour in this fundamental kind of way? The factors leading women to assume more responsibility for caring roles in the private sphere (and the public for that matter) are deeply embedded in our social and economic structures. Changing law alone will not help, although it may be important to do so in any one instance.

Law and many other forms of work are still being run on a male and ethnocentric model, which assumes — among other things — that private sphere needs of women and men are being met by someone else. This used to be the wife. Now that many male lawyers have female partners who also work outside the home, this assumption doesn't work as well. Now that many lawyers are women, it doesn't work at all, except to the extent that they can purchase the services of domestic workers, often poor and often immigrant women, thereby reproducing racial and class hierarchies. What women who are leaving the legal profession are saying is that they cannot and do not want to practise law in the way that it is currently done, and they do not want to organize their lives in a workaholic fashion that denies the other parts of their lives. Some men are saying this too.

The public sphere has opened up to women without changing itself much and without corresponding changes being made to the private sphere to pick up the slack. To be blunt, who is going to clean the house and care for children if both partners work fulltime in the paid labour force? Right now, women continue to pick up the slack to a greater extent than men in heterosexual households. That "choice" appears to make sense, since women have to take time off work anyway to care for newborns and their own bodies, and men tend to earn more on average, so there is little incentive for men to take time off. And for wealthier couples, people are paid to clean their houses and care for the kids. But this model only works for two-parent families and for couples who can afford either the option of having one non-earning partner or purchasing caregiving labour from a third party. The difficulties faced by single mothers and by couples who experience unemployment cannot begin to be addressed by these options.

At a larger level, we are seeing a retrenchment of the role of the public in the sense of providing state support for responsibilities that can

---

[76]Olsen, "The Family and the Market," has shown that most law reforms designed to deal with family and work have in fact ended up reinforcing the public/private divide.

be constructed as "private" — especially "caring" functions[77] — as governments try to deal with the deficit and the public debt. Indeed, this example is illustrative. Who or what are governments cutting and is it gendered? I think it is. Governments are cutting social services, welfare, unemployment insurance, education, health care, all areas where women very often dominate as consumers and as workers.

One of the paradigmatic examples of a group constructed as a drain on the social welfare system in current debates is single mothers on welfare.[78] The message seems to be that those who have been reliant on social welfare must find a way to enter the public sphere of paid work, and pay their own way. In order to let the public responsibility for social welfare off the hook, people are being told to get into the public sphere of paid work. How they are going to manage their "private" responsibilities or indeed find these jobs remains unresolved. It is no wonder that those of us who do hold paid jobs in the Canadian economy experience tremendous stress and seem to spend more and more hours per day handling paid work responsibilities and probably paying someone else to handle our private responsibilities; while those who are without paid work are increasingly marginalized and constructed as "dependent" on society.[79]

Ultimately, how do we shift the debate? It seems to me that the answers lie in reworking the ways that the two spheres interact, and changing the way that the public sphere currently relies on "free labour," usually female labour, in the private sphere. As Evans and Pupo put it, "women's inequality in the home and in employment are inextricably linked . . . The problem is the distinction made between work and family policy, and between equality at work and equality at home." The private sphere is being stretched about as far as it can go. The privatization trend evident in Canada is ultimately doomed. People are tired. Governments are cutting costs and what is the first thing to go? Care for dependent people such as the sick and the elderly. Who is supposed to pick up that slack? The already overtaxed private sphere of women. Either the model of fulltime work must change, or the public sphere has to assume more responsibility for fundamental social res-ponsibilities such as childcare, or probably both.

---

[77]Carol T Baines, Patricia M Evans and Sheila M Neysmith, "Caring: Its Impact on the Lives of Women," in *Women's Caring*, ed. C Baines (Toronto: McClelland and Stewart, 1991): 11-35.

[78]Government of Canada, *Improving Social Security in Canada: A Discussion Paper* (Ministry of Supply and Services, 1994), 20-21. However, even people who claim unemployment insurance are now being constructed as undeserving.

[79]Bruce O'Hara, *Working Harder Isn't Working: A Detailed Plan for Implementing a Four-Day Workweek in Canada* (Vancouver: New Star Books, 1993).

In some sense, the controversial Wilson Report recommendation on billing challenged the model of fulltime — or rather overtime[80] — work to change. The angry responses to this recommendation reflect a number of things, but perhaps most fundamentally reflect the way that economic interests are entrenched in the male model of work that has been facilitated in the past by female unpaid labour in the home. Perhaps a better question to ask — and many women lawyers have asked it — is why just encourage women to bill fewer hours? Why is this constructed as a women's problem? In some sense, the "accommodation" approach of the Wilson Report does reinforce the difference approach to women that historically has all too often resulted in our placement in the "private" sphere. Why not create options so that all lawyers are given incentives *not* to work such outrageous hours; to share work more; to develop lives outside our work; to care for our own children, or other peoples' children if we do not have our own. The Wilson Report laid some groundwork for moving in this direction but in concentrating mainly on "accommodating" women, failed to recognize the radical potential in its analysis. The challenge for social policy now is to try to achieve this radical potential rather than falling back on traditional models that embody the public/private divide.

---

[80]Pothier, "A Comment."

LOOKING BEYOND TYABJI: EMPLOYED MOTHERS AND CHILD CUSTODY LAW[1]

Susan B Boyd

Judy Tyabji may not be everyone's favourite British Columbia politician. In fact, she is now quite a marginalized politician. After her affair with Gordon Wilson, ex-leader of the BC Liberals, became public, he eventually was ousted as Leader and she resigned as "Liberal House Leader". They then began their own political party, the Progressive Democratic Alliance, and married. This story is intriguing in itself, but I want to address specifically the issues raised in the BC Supreme Court decision in which Tyabji lost custody of her three children, mainly on the grounds that she had a more aggressive career-oriented lifestyle than the father, Kim Sandana, whom she left after she got involved with Gordon Wilson.

The decision gave rise to considerable public discussion in the media and elsewhere of the implications of mothers being involved in demanding careers. Several female journalists who interviewed me at the time of the decision were fearful of the implications of the decision for their own potential custody disputes. Other commentators applauded the *Tyabji* decision and the BC Court of Appeal decision in the 1993 *Van Gool* case[2] for entertaining the possibility that men could be recognized as the appropriate custodial parent, in an apparently gender neutral

---

[1]This paper was presented at the University of Windsor, Humanities Research Group, November 9, 1994 and to the University of Victoria Faculty of Law, December 2, 1994. Thanks to Joan Brockman, Claire Young and the audience at the two presentations for comments.

[2]*Tyabji* v *Sandana*, Kelowna Registry No. 20722, 16458, March 3, 1994, Mr Justice Spencer; *Van Gool* v *Van Gool*, Vancouver Registry CA016719, [1993] B.C.J. No. 2758, B.C.C.A., Lambert, Wood and Rowles, JJA, affirming the judgment of MacDonald J of the B.C.S.C. in *Van Gool* v *Van Gool*, Vancouver Registry No. D081601, B.C.S.C. [1993] B.C.J. No. 180.

fashion.[3] The issues raised in the case remain current, it seems, as in mid-October 1994, Tyabji appeared on the Oprah Winfrey show to discuss it.[4] According to the Vancouver Sun, "Tyabji portrayed herself as a working woman unfairly penalized by the courts for having a political career" and said that "she would have quit her job in order to keep custody of her three children".[5]

I will try not to get distracted by the question of whether Judy Tyabji should or should not have received custody. Indeed, the lengthy judgement did not give me enough information to make this assessment in any meaningful way. The testimony of the court-appointed experts is somewhat more helpful in this regard. Despite his insistence that this case was an "ordinary custody case" regardless of the high profile of the parties,[6] Mr Justice Spencer nonetheless avoided telling us the details of caring of the children in favour of describing his views of the parents and their lifestyles. Like other recent judgements in BC giving custody to the father,[7] this judgement spends a lot of time explaining why the mother in question is unreliable, her testimony cannot be relied on, and why she has acted against the best interests of the children, regardless of the caregiving relationships that existed with the children. Actually, this style is perhaps more typical than we realize. Custody decisions generally are very stylized, so that we in fact learn very little about the best interests of children in them.[8] Because we are, as is all too typical in judicial decision-making, deprived of some meaningful knowledge about the people involved in the case, it is at the level of discourses on the relationship between paid work, lifestyles, and

---

[3]Ean Maxwell, Sandana's lawyer, said that the *Tyabji* case was a model of a ruling that is blind to gender, and appropriate to the realities of a day in which both men and women are involved in being parents: Alanna Mitchell, "Busyness of Parent a Custody Issue," *The Globe and Mail*, 5 March 1994, A1-A2. Vancouver family lawyer Robert DeBou has applauded this and the *Van Gool* case, which I discuss below. See Mitchell and on the *Van Gool* decision, Phil Needham, "Ruling Puts Fathers on an Equal Footing," *The Vancouver Sun*, 9 February 1994, A2. See also the column by Peter Raeside on "Men" in *The Globe and Mail*, 2 March 1994, A24, applauding the *Van Gool* decision that "puts fathers on an equal footing with mothers in custody matters."

[4]Doug Ward, "Judy Tyabji takes child-custody woes to *Oprah Winfrey Show*," *Vancouver Sun*, 18 October 1994, A3.

[5]Ibid.

[6]*Tyabji*, 2.

[7]*Van Gool* and *Doise* v *Doise*, (1993) B.C.J. No. 2867, Vancouver Registry No. A930461, B.C.S.C., Dorgan J filed December 10, 1993.

[8]Jenni Millbank, "What do Lesbians do? Motherhood Ideology, Lesbian Mothers and Family Law." (LLM thesis, University of British Columbia, 1994).

parenting — and their disciplining effect — that the case is of importance to me.

I first examine the discourses in the case in which Judy Tyabji lost custody of her children, partly on the grounds that she was an ambitious career woman. In a sense, Tyabji's "public" life was viewed as impeding her ability to function adequately in the "private" sphere.[9] I then review recent developments in child custody law and the gendered dynamics involved. I argue that women's primary caregiving labour in heterosexual families has tended to be undervalued and I place the Tyabji case in that context. By reviewing labour force trends for employed mothers generally, I question whether the Tyabji case really represents a new era in gender neutral custody law, as is argued by some commentators. Was this a case where the mother lost simply because she would have done had she been a man? Was the father the more nurturing parent? Was he the primary caregiver? Were the best interests of the children placed at the forefront? I also raise questions about strategies for custody law reform that rest on "primary caregiving".

In *Tyabji*, Mr Justice Spencer bent over backwards to insist that he was not being "sexist" in his determination. He did so in part by reversing the facts in his mind at the end of his judgement, as a sort of test of his decision:

> Finally, on the question of custody, I have tried to reverse the parents' situations in my mind as a test of this decision. If the facts as they relate to the mother related instead to the father, and vice versa, I have no doubt at all that she would be awarded custody. As it is, I am satisfied that custody should be awarded to him.[10]

I am not certain that one can avoid being sexist in this manner.

The Case

In the *Tyabji* case, the parents agreed that the children (a son aged 5 and two daughters aged 4 and 1)[11] should not be split up. An interim order that had been in effect from September 3, 1993 until March 3, 1994 had left custody with Judy Tyabji.

Mr Justice Spencer did not directly address the fact that Judy Tyabji left her four-year marriage with Kim Sandana in a rather public and

---

[9]This is an interesting reversal on the oft-quoted fact that women's role in the "private" family sphere tends to prevent them from moving into "public" office.

[10]*Tyabji*, 26.

[11]Justice Spencer described the son as almost 6 and the younger daughter as almost 2.

dramatic way to live with fellow politician Gordon Wilson, a fact that many disapproved of. He did however say that:

> Responsibility for breaking up the marriage, where it lies clearly with one side more than the other, is not necessarily a test for awarding custody. It is relevant only if it shows that one parent or the other, pursued and will probably continue to pursue, his or her self-interest to the detriment of the children, or, if it shows that one or the other is less believable on oath, it may result in that parent's evidence bearing upon custody receiving less weight.[12]

Tyabji failed on both counts.

In keeping with recent trends in custody law, Mr Justice Spencer attempted to write gender out of his decision-making altogether:

> Stereotypical gender views have no place in an award of custody. Some of the evidence showed that one of the interim orders for custody in this matter was intemperately criticized by one witness based upon an entrenched view of gender rights. Custody will not be awarded on the basis of any pre-conceived idea about daughters being with mothers and sons with fathers, nor about age-appropriate placements, nor about the rights of working parents of either sex not to be deprived of custody simply because they have a particular career path. In every case the court must determine the best interests of the children and all else must give way to that.[13]

However, he went on to say that he was nonetheless "alive to the common sense suggestion that, often, small children will have formed a stronger emotional and physical bond with their mothers."[14] He said that this notion must be weighed against any evidence to the contrary as well as any evidence showing that "as strong a bond has since formed with the other parent, or that the probable futures of the parents puts one, rather than the other, in a position better to serve the best interests of the children from the time of the trial onwards."[15]

On both the issue of "subsequent bonding" and "probable futures," Mr Justice Spencer determined that bonding with Tyabji diminished in importance. This determination led him to decide the case in direct contradiction to the opinions of two court-appointed expert witnesses (Dr Baerg, a Family Court Counsellor and Dr Lea, a Registered Psychologist), who thought that custody should stay with Tyabji. Mr Justice

---

[12] *Tyabji*, 5.

[13] Ibid., 6.

[14] Ibid.

[15] Ibid.

Spencer said that like himself, the experts found it difficult to choose between the parents, both of whom had deep love for the children and had much to offer them, albeit in quite different ways. Therefore the experts made their recommendations based on "theoretical principles".[16] He departed from their opinions for the following reasons,[17] and it is here that the issue of Tyabji's "career and ambition" enters the scene.

1. Involvement in Child Care and "Bonding"

Mr Justice Spencer found that although Kim Sandana was relatively uninvolved in the oldest child's care until he was approximately one year old, since then he had been actively involved with the boy and his other children. Tyabji disagreed with this assessment of the father's involvement (as in fact many women do)[18], but Mr Justice Spencer preferred Sandana's evidence in this regard. This is partly because of Tyabji's comments to the press about her role as an MLA being "more than a full time job," "almost a 24-hour-a-day, seven-days-a-week job". Mr Justice Spencer dealt with Tyabji's protest that the quote was taken out of context as follows:

> Whatever the context, that quote, taken with the other evidence from both sides, satisfies me that the demands of her work as an MLA have resulted in the mother spending less time with the children from her

---

[16]*Tyabji*, 7.

[17]He gave another reason for departing from their recommendations, which does not seem to me to be a difference of opinion with the experts but rather an agreement: "I am satisfied that each parent offers a more than satisfactory level of love, guidance and security to the children. There is little to choose between them," Tyabji, 8.

[18]Among employees in dual-income full-time earner families, men were extremely satisfied with their spouse's parenting: 90 percent reported high satisfaction with their spouse's ability and performance as a parent. When women were asked about such things as their spouse's involvement with the children, the amount of help he offered with them, and his child-rearing skills, women in dual-income families were significantly less happy with their husband's performance as a parent: only 63 percent reporting a high level of satisfaction; Christopher Higgins, Linda Duxbury, and Catherine Lee, *Balancing Work and Family: A Study of Canadian Private Sector Employees* (London: Western Business School, University of Western Ontario, 1992), 72-73, Appendix, 16. Summarized in Donna S Lero and Karen L Johnson, *110 Canadian Statistics on Work and Family* (Ottawa: Canadian Advisory Council on the Status of Women, 1994), 54.

election in October 1991 up to the interim custody order of September 3, 1993 than did the father.[19]

In addition, Tyabji's efforts to calm the public — not all of whom were happy with her entry into politics as a young mother — on the implications of her career for the care of her children, were held against her in the custody determination. In particular her statements to the public that the children were growing "much closer to [her] husband as a result of [her] work" were used. She said that while her "first priority always has and always will be my family," her husband was "at home with them almost every minute that I am away." Later she added that "I find myself happier with my role, and therefore a better mother, because I am doing something suited to my nature."[20] However the overall impact of these quotes on the court was to show Sandana's involvement, not her commitment as a mother.[21]

Tyabji's role in organizing care for the children by locating a nanny was negated by the fact that Mr Justice Spencer found that the father primarily instructed the nanny about the children's needs in their Kelowna home. Sandana was found to have been "actively involved in caring for the children in a hands on way."[22] As well, based on a detailed counting of days in which the children were in the father's care and in the mother's care after her election, Mr Justice Spencer found that "the children were more used to being in the family home with their father and the nanny than with their mother and that it was of assistance to the mother in her career that they be there."[23]

Mr Justice Spencer also found that Tyabji's credibility was deficient with regard to evidence offered by her[24] and that the evidence of her friends was less reliable than that of Mrs Brown, the nanny who worked in the Kelowna home (and who admitted that she was disenchanted with Tyabji).[25] "I am persuaded that Mrs Brown's recollection that the mother, when at home in Kelowna, spent a great deal of time in and about her

---

[19]*Tyabji*, 9.

[20]*Ibid.*, 10.

[21]See also the interesting comment on how these quotes were used by Kenneth Whyte, "Tyabji Custody Case Shows Context is all When Considering the Words of Politicians," *The Globe and Mail*, 12 March 1994, D2.

[22]*Tyabji*, 12.

[23]Ibid., 13.

[24]Ibid., 12-13.

[25]Ibid., 17.

constituency business while the father was responsible for the children's care, is correct."[26]

2. Probable Futures

Mr Justice Spencer's other main reason for awarding custody to Sandana was a consideration of the children's future, recognizing that it is always difficult to predict. He chose to look at the short term rather than the long term. The fact that Sandana could offer the family home and community that the children had lived in until the interim order was key. "If they are in their father's custody, the children can look forward to staying at his home in the rural outskirts of Kelowna for the foreseeable future."[27]

As well, the apparent flexibility of Sandana's schedule was viewed as a benefit. He works shifts at a grocery store from 2:00 p.m. to 10:00 p.m. five days a week, with Tuesdays and Thursdays off. He would provide the former nanny's care on weekends when he is working, and would be helped by his mother who lives next door, except when her market garden business consumed her energies from April until an undefined date. At that point, Sandana would obtain another nanny for these three days a week. The point made in the testimony of one of the expert assessors, that Sandana was out of the house for some nights of the week in addition to those when he was working, due to his involvement in various sport activities in the community,[28] was not raised by Mr Justice Spencer when assessing Sandana's availability to the children. Sandana was simply assumed to be available to the children as a result of his less demanding job.

In contrast, Mr Justice Spencer noted that while in Tyabji's custody, the children had moved from Sechelt to Victoria and that the future was vague given the political careers of both Judy Tyabji and Gordon Wilson. "Granted the vagaries of political life, those careers are uncertain . . . I accept that geographic stability is less important to small children than is the stability of their family context, but it is an advantage the father has to offer."[29] Mr Justice Spencer did not mention the fact that the assessors found that Sandana dislikes change and for that reason values routine, and is marginally less accepting of the children's foibles than Tyabji.[30] As well, Tyabji was found by the experts to be more actively

---

[26]*Tyabji*, 17.

[27]Ibid., 14.

[28]Testimony of GW Lea, 21.

[29]*Tyabji*, 14.

[30]Testimony of GW Lea, 21.

involved with the children during play activities than Sandana[31] and expert witness JM Baerg found that the youngest daughter appeared to be more content in the home of her mother and Wilson. In that home, both Tyabji and Wilson participated in caring for the children in a relaxed routine.[32] The children appeared to be generally more relaxed and less demanding of attention when with Tyabji.[33]

3. Stability

The "stability" offered by Sandana was viewed by Mr Justice Spencer as overriding the alleged benefit that Tyabji could offer of having both female and male influences in her household. He agreed that all other things being equal, that would be an advantage.[34] But here all things were not equal. That Tyabji had a career path that entailed her absence from her home to a much greater degree than the father's occupation was bad enough. Worse still, her new partner, Gordon Wilson, was in the same boat. Comments of both Tyabji and Wilson to the press were used to illustrate the demanding lives of politicians.[35]

As well, Mr Justice Spencer questioned the viability of Wilson's relationship with Tyabji, by noting a comment made by Wilson to the press "that the stress of politics on a marriage is extreme."[36] But he avoided any potential criticism that he was implying that some jobs preclude obtaining custody of children:

> This factor should not be seen as disentitling all who serve in public office to the custody of their children. In many cases, probably most, where one partner follows a political, or any other demanding occupation, the other partner is available to assume the family role.[37]

---

[31]Testimony of GW Lea, 21.

[32]Testimony of JM Baerg, 7-8.

[33]Ibid., 7-9.

[34]*Tyabji*, 15. The heterosexist nature of this argument offered by Dr Lea was not commented on by the Mr Justice Spencer but rather affirmed by him.

[35]See the interesting analysis of this by Kenneth Whyte, "Tyabji Custody Case Shows Context Is All When Considering the Words of Politicians," *The Globe and Mail*, 12 March 1994, D2. Whyte argues that the quotes were taken out of context, that Tyabji and Wilson often "blow hard" around reporters, and that the thought that "giving weight to a couple of cheap quotes might have tipped the balance is unsettling."

[36]*Tyabji*, 18.

[37]Ibid., 15.

He failed to mention that the partner who has assumed the "family role" has more often been women than men. The disparate impact of this ruling on women, due to the relative rarity of a man assuming this role, was overlooked. Mr Justice Spencer went on to characterize the "problem" of two parents who both have demanding careers as follows:

> Where both partners pursue demanding occupations, professional or otherwise, *it is by their choice*, and they are then faced with the task of providing for their children in their absences. In such a case there is no question of choosing between alternative custodial regimes.[38] [emphasis added]

But here, he need only choose between the parent with the less demanding occupation and the one with the more. It is apparently irrelevant that the parent with the more demanding career is a woman, who has already breached taboos by having an affair — a very public affair that caused a scandal — with a politician she met in the course of pursuing her career. No matter what she does, she is doomed: "I find that although the mother spent whatever time she could with the children in the midst of her busy political career, her time with them was, and will continue to be, limited because of her career agenda."[39] In contrast to both Tyabji and Wilson, Sandana "although lacking the support of anyone to compensate for his wife's absence, as a surrogate mother, will have far fewer compelling distractions to interfere with his attention to the children."[40]

Mother Exaggerates Complaints: Cats and In-Laws

A theme in Mr Justice Spencer's judgement was that Tyabji's evidence was "at times exaggerated by her perception of a conspiracy against her."[41] Tyabji's comments about the number of cats in the Kelowna home and the home of the paternal grandmother next door, and her concerns about the cleanliness of the homes, were viewed as exaggerated and an exercise in self-justification (as a reason for the breakdown of her marriage, along with other issues concerning tension with Sandana's family). The homes of both parents were evaluated by Mr Justice Spencer as "perfectly acceptable," however with "the father's offering more scope for young children to run and play."[42] Not only was Tyabji's

---

[38] *Tyabji*, 16.

[39] Ibid.

[40] Ibid., 18.

[41] Ibid., 25.

[42] Ibid., 20.

evidence discounted, but it was held against her since she was constructed as a woman who exaggerated selfishly for her own benefit.

5. Characters and Careers

Although Mr Justice Spencer did not appear to count this factor as a separate reason for departing from the experts' opinions, it was evidently of key importance to him. Psychological tests apparently suggested that "the father is less assertive than the mother. He was more inclined to a contemplative, philosophical outlook where the mother is more action-oriented."[43] Although the father was found to have a tendency to procrastinate, Mr Justice Spencer found that he did not procrastinate in everything. In general, Mr Justice Spencer "prefer[s] the sort of influence [that the father has] to the influence, valuable as it may be, that the mother presents at this stage."[44] The father is "a person who is relaxed and philosophical, who is highly intelligent although he has little post-secondary education, and who will spend time with his children both caring for them and entertaining and educating them. *They are his primary concern*." Although he has interests outside the home such as teaching judo and playing soccer, these "do not present him with as demanding an agenda as the mother's political ambition presents to her."[45] His difficulty in coping with the need for attention of all three children at once — commented on by the experts — can be dealt with in time and indeed may diminish "as the children re-accustom themselves to being permanently with him."[46]

In contrast, Tyabji's character is "strong and assertive". Although Mr Justice Spencer assessed her as "intensely interested in her children's well being and able to offer them love and quality guidance," she "has an intense interest in the advancement of her own career *which will compete with the children's needs for her attention*."[47] Two "minor incidents" — involving the older children's accidents in or near water — were cited to prove this concern. "What is of concern is that on both occasions the mother was engrossed in her political activities without taking adequate care to watch the children or to see that some responsible person was watching them."[48]

Tyabji's placing of the children's interests at the centre of her life was questioned at another level, for example where she registered the son

---

[43] *Tyabji*, 20.

[44] Ibid., 20-21.

[45] Ibid.

[46] Ibid.

[47] Ibid., 21-22; emphasis added.

[48] Ibid., 22.

in kindergarten under her surname rather than "the family name" Sandana. Mr Justice Spencer was also troubled by a photograph session in which Tyabji, Wilson and the three children were portrayed together. Tyabji's moves to distance herself from her previous relationship were taken to imply an overlooking of the interests of the children.[49]

6. Lifestyles

Mr Justice Spencer explained that "the children will find a calmer, less aggressive lifestyle with the father than they would with the mother. *They are less likely to learn that other peoples' views may be ignored.* At this stage of their lives I think that is in their best interests. There will be time in the future for them to be spurred by their mother's ambition."[50] Tyabji was also condemned for being adversarial in her testimony, for example being "unwilling to concede that [Sandana] played any substantial role in their nurturing".[51]

In summary, Mr Justice Spencer said that the father would provide more continuity of care, whereas the mother's attention as a custodial parent would be "to a degree, sidetracked by her career agenda," as would that of Gordon Wilson. "At their present ages, the children will benefit more from their father's lower-key approach to life than from the mother's wider-ranging ambition."[52]

Summary

Overall, although Mr Justice Spencer deemed it quite proper that Tyabji took her infant child to Victoria while she attended the Spring 1992 session of the provincial legislature, he took a dim view of her dedication to her career. This dim view prevailed despite the finding in the expert opinions that Tyabji went out of her way to prioritize her children's interests in her organizing of her work life. Mr Justice Spencer favours, in the end, the conservative, quiet, lifestyle of Sandana in a more rural environment.[53] Mothers who depart from the norm — whether

---

[49]*Tyabji*, 23.

[50]Ibid., emphasis added.

[51]Ibid., 24.

[52]Ibid., 25.

[53]A parallel can be drawn with a recent lesbian custody case in British Columbia; a custody dispute arose between a mother and father who had been raising their children in Cranbrook. The mother had gradually realized that she was a lesbian and disclosed this fact to her husband. She did not wish to end the marriage, but her husband had an affair with a woman, which made the marriage less tenable. He subsequently left the matrimonial home. Ms S had for

sexually or in terms of work or lifestyle — often have a difficult time persuading judges that it is in the best interests of their children to be with them, particularly when they wish to move away from a rural "safe" environment which evokes an image of the perfect old-fashioned upbringing for children.

Assessment of the Tyabji Case

Questions can be asked about the *Tyabji* decision on a number of levels:

1. Was it gender neutral, as Mr Justice Spencer insisted? This raises the larger question of whether custody decision-making can ever be really gender neutral in the current conjuncture, and if so, how.

2. Does the purported emphasis on primary caregiving in *Tyabji* follow the recommendations of those who adopt the primary caregiver presumption?

3.How does the *Tyabji* case fit with other recent BC decisions on custody law?

Is Tyabji an Example of Gender-Neutral Decision-making?

Feminist scholars have argued that mothers who are employed in the public sphere tend to be assessed by judges and other legal actors as less than ideal mothers, as are other mothers who in some way depart from that idealized image, such as lesbian mothers or mothers with disabilities.[54] This is because the "ideal" mother remains imbued with

---

some time wished to move to Vancouver and affirmed this wish during the custody dispute. This perhaps understandable decision for a woman beginning to self-identify as a lesbian was constructed as not only being selfish, but as depriving her children of the safe stable environment in the country that the father could offer. She lost custody on the grounds that her "adventure" was not one that "the children should be part of at this point in time." The status quo was deemed to be in "the totality of the environment which Megan and Susan have in Cranbrook and the regularity or normality which that connotes." "A move with Ms S to the Lower Mainland, particularly given Ms S's present need to explore her lesbian nature, will not now, in the immediate future, provide anything approaching that which has been normal or stable in their lives." *S* v *S*, Cranbrook Registry No. 02278, S.C.B.C., Mr Justice Melnick, filed November 30, 1992.

[54]See, for an example of feminist literature on custody, Carol Smart and Selma Sevenhuijsen, eds., *Child Custody and the Politics of Gender* (London & New York: Routledge, 1989).

an image of a stay-at-home mother who devotes herself to her children's interests (and probably those of their father), who puts her own interests second, or third, and who therefore performs her role within the context of the patriarchal heterosexual nuclear family. Mothers' roles in the public sphere therefore tend to be viewed as inconsistent with those in the private sphere.

Employed mothers are, indeed, often constructed as *selfish* and as putting their own interests first, despite the fact that many two-parent families today must have both parents in the labour force in order to make ends meet. In 1988, both parents were employed in 58 percent of two-parent families with children under age 13. In 1991, 1 percent of dual-earner families had incomes that fell below Statistics Canada's low income cut-off points. Without the contribution of the wife's earnings, the low-income incidence among these families would have been almost 15 percent. Earnings of wives were more crucial (to avoid poverty) in young families with wives under 35 years of age).[55]

If mothers demonstrate a willingness to compromise their public sphere activity, for example by taking part-time work instead of full-time (which we know women do disproportionately to men),[56] they may be regarded somewhat more positively.[57] Mothers who participate in the paid labour force are, however, often assumed to share childcare more or less equally with their male partners. This means that any preference for them, on the basis that they are primary caregivers of their children, may immediately disappear. This phenomenon occurs *despite* the studies demonstrating that women — whether employed or not — are still overwhelmingly responsible for childcare and domestic labour in heterosexual households. Ninety-five per cent of women with children under five provide primary childcare on a daily basis, compared to 69 percent of men. In dual-earner couples in which both parents were employed full time, the majority of wives (52 percent) retained all of the responsibility for daily housework (some of which is related to childcare), while 28 percent had most of the responsibility. Equal sharing of housework was reported in 10 percent of these families, and in the remaining 10 percent, the husband had all or most of the responsibility.[58]

---

[55]Donna S Lero and Karen L Johnson, *110 Canadian Statistics on Work and Family* (Ottawa: Canadian Advisory Council on the Status of Women, 1994), 12-13.

[56]Lero and Johnson, *110 Canadian Statistics*, 4.

[57]See Susan B Boyd, "Child Custody, Ideologies, and Employment," *Canadian Journal of Women and the Law*, 3, no. 1 (1989): 111.

[58]Lero and Johnson, *110 Canadian Statistics*, 8. Armstrong and Armstrong point out that many of the time-budget studies that these types of figures reflect do not take account of the constant responsibility that caregiving of children involves: Pat Armstrong and Hugh Armstrong, *The Double Ghetto*, 3d

At another level, men have not been assessed as parents from the same starting point as women. Men are, as fathers, *expected* to be in the public labour force. That is the normative assumption. Any activity that they perform in the private sphere of home and family is therefore regarded as somewhat "extra" to the normal expectations made of them, and is often applauded in judicial decision-making, as well as by neighbours and casual observers. There is tremendous pressure in this society on women to prove that they care *about* children by caring *for* them. Men can more easily show that they care about their children without doing the service work.[59] They can easily show that the service work will be covered by offering a new female partner, a grandmother (as in *Tyabji*) or a sister. Objectivity or neutrality in the assessment of maternal and paternal behaviour is therefore a very difficult thing to achieve and, I suggest, far more difficult than the judiciary is prepared to admit.

Even Mr Justice Spencer's gender flip mentioned above, where he argued that had Sandana been a woman and Tyabji a man, he would have made the same decision, may not be capable of being neutral. If Sandana had been a woman, with shift work in a grocery store, spending three nights a week out on sports activities in addition to the evenings she worked, would she have been constructed as a mother who put her children's interests first? (Also, would she have earned as much as Sandana?). Would having a large number of cats in her house and her mother's house have been regarded as a neutral factor? Would the fact that she was nervous of change and had felt consumed by her husband be viewed neutrally? I think it is highly unlikely. If Tyabji had been a male politician, offering a new female role model and caregiver, would he have been viewed as excessively ambitious? Would his complaints about the feline urine on the child's bed have been viewed as exaggerated? I also think that this is unlikely.

Did Mr Justice Spencer Apply a Primary Caregiver Standard in Tyabji?

One strategy to redress the undervaluing of women's caregiving labour in the private sphere, as well as to address other gendered power plays in the custody field, has been to argue for a presumption that the parent who has been the primary caregiver should receive custody in disputed

---

ed. (Toronto: McClelland & Stewart, 1994), 114.

[59]Carol Smart, "The Legal and Moral Ordering of Child Custody," *Journal of Law and Society* 18, no. 4 (1991): 485-500. See generally, Carol Baines, Patricia Evans and Sheila Neysmith, eds., *Women's Caring* (Toronto: McClelland & Stewart, 1991); and Joan C Toronto, *Moral Boundaries: A Political Argument for an Ethic of Care* (New York and London: Routledge, 1993).

cases (unless clearly unfit).[60] This presumption has been criticized on a number of counts, including its propensity to reproduce an ideology of motherhood, which in turn reinforces gendered relations in both private and public spheres. As well, it may exacerbate the difficulties experienced by women with disabilities and First Nations women in showing that they are "good mothers," given that their patterns of parenting may not look like primary caregiving.[61] Nonetheless, in my view, it remains worth exploring to the extent that it provides a legal mechanism — albeit a limited and flawed one — that potentially allows us to notice and re-value what has been viewed as women's work in the home: childcare and the domestic labour associated with it.

What I am interested in is the extent to which primary caregiving has started to be taken into account by the judiciary, only to be subverted in a manner that arguably operates against the interests of women.[62] Just as primary caregiving language started to be used in Canadian courts, other trends have operated to obscure the gendered nature of it. Fathers have been constructed as having a vital role to play in the raising of children.[63] Mothers who are viewed as "depriving" fathers of this opportunity — for example by limiting access to children by moving away or by breaking up a relationship "unnecessarily" — are viewed

---

[60]Richard Neely, "The Primary Caretaker Parent Rule: Child Custody and the Dynamics of Greed," *Yale Law and Policy Review* 3 (1984): 168; Susan B Boyd, "Potentialities and Perils of the Primary Caregiver Presumption," *Canadian Family Law Quarterly* 7 (1990): 1; Carol Smart and Selma Sevenhuijsen, eds., *Child Custody and the Politics of Gender* (London & New York: Routledge, 1989); and Martha Albertson Fineman, *The Illusion of Equality: The Rhetoric and Reality of Divorce Reform* (Chicago & London: University of Chicago Press, 1991). See the recommendations of the Canadian Advisory Council on the Status of Women, *Child Custody and Access Policy: A Brief to the Federal/Provincial/Territorial Family Law Committee* (Ottawa: 4 February 1994).

[61]Marlee Kline, "Complicating the Ideology of Motherhood: Child Welfare Law and First Nation Women," *Queen's Law Journal* 18, no. 2 (1993): 306-42; and Judith Mosoff, "Motherhood, Madness and the Role of the State" (LLM thesis, University of British Columbia, 1994)

[62]Laura Sack has shown that a related trend has occurred in the United States: "Women and Children First: A Feminist Analysis of the Primary Caretaker Standard in Child Custody Cases," *Yale Journal of Law and Feminism,* 4 (1992): 291.

[63]Janice Drakich, "In Search of Parenthood: The Social Construction of Ideologies of Fatherhood," *Canadian Journal of Women and the Law* 3, no. 1 (1989): 69; and Martha Fineman, "Dominant Discourse, Professional Language, and Legal Change in Child Custody Decisionmaking," *Harvard Law Journal,* 101 (1988): 727.

increasingly negatively in society and in law.[64] Simultaneously, as mothers have entered the labour force in increasing numbers, it becomes difficult for judges and other legal actors to "see" that the caring for children remains a gendered phenomenon, with women continuing to take more responsibility on the whole. Arguably, when the mother is viewed as an active, ambitious career woman, this difficulty becomes an impossibility.

Is it possible that Tyabji carried out the role of organizing her children's care and ensuring that they were with her as much as possible *despite* the demands of her career? Is it possible that we simply cannot see this possibility because we assume that she does politics in the same way that a man might? Tyabji *may* have been breaking new ground in this field. She certainly took the children with her often to political functions and set up offices to accommodate the children.[65]

In *Tyabji*, Sandana was effectively viewed as the primary caregiver, although this language was not used. This view was constructed despite the fact that one of the expert assessors determined that Tyabji was the "historical emotional caregiver."[66] This psychological bond may not be the same as a primary caregiver tie, but it is often related to the primary caregiver role. Apparently the judge who made the 1993 interim judgement in favour of Tyabji also believed that the children were more emotionally bonded to her than to their father.[67] As well, the family doctor reported that the children were brought to his office by both parents, but more so by Tyabji, especially when they were younger.[68] Tyabji reported to expert JM Baerg that she feared "a disruption in her children's lives from the primary care that she has always given or arranged for" and that "she and her husband have always agreed on

---

[64]Kathy Tait, "Hung Out to Dry: Tyabji Didn't Get Support She Wanted From Oprah," *Province Showcase*, 23 October 1994, B12, arguing that Tyabji should have lived in her riding, which was home to her children, and found a way for herself and Sandana to co-parent.

[65]Testimony of G W Lea, 15-20.

[66]See Testimony of Court-Appointed Expert Witness JM Baerg, Family Court Counsellor, 9. The Testimony of the other Court-Appointed Expert Witness GW Lea, Ph.D. Psychology, indicated different grounds for recommending that Ms Tyabji receive custody, including the fact that the youngest child was only 17 months old, that two of the three children were girls, and that Tyabji could offer a "two-parent" home. These grounds for showing a more significant connection between Tyabji and the children are problematic from my point of view, but they do parallel the views of Baerg. Lea also added that it would be discriminatory to suggest that a young woman with children should not enter politics.

[67]Ward, "Child-Custody Woes," A3.

[68]Testimony of J M Baerg, 6.

child rearing matters only because it was directed almost entirely by herself."[69] As well, both experts reported that the children were less demanding and somewhat more at ease with Tyabji than Sandana, although neither expert drew adverse conclusions concerning Sandana as a result.

Instead of discussing this evidence that may have been related to caregiving responsibilities, Mr Justice Spencer took the route of counting the days that the children spent with each of Tyabji and Sandana.[70] The relevant period for counting was defined to be the period of time *before* the interim order (after which the children spent more time with Tyabji) and *after* the oldest child was one year old (before which time Sandana was not very involved in care). It is of note that in other cases, usually where the mother was found to be the primary caregiver while the family was intact, the relevant period has sometimes been defined to be that during which the father had interim custody. In contrast to *Tyabji*, in two recent BC cases, where the mothers had been the primary caregivers, good caring by the mother was either said not to count, because the mother was seen as selfish or self-serving,[71] or, primary caregiving was said not to be a matter of counting.[72] In both cases, the mothers lost custody despite the fact that they had been primary caregivers.

Regardless of whether Judy Tyabji should or should not have received custody, I am concerned about the fall-out for employed mothers who are in less high-profile positions than Tyabji. It is significant that Tyabji's case received such publicity, when on a routine basis many employed mothers are deprived of custody of their children, and their voices on caregiving and issues such as sexual abuse of children ignored. As mentioned before, there is an increasing but mistaken tendency to assume that women in the labour force share caregiving more or less equally with the fathers of their children. The trumpeting of *Tyabji* as a gender neutral victory for fathers plays into the assumption that fathers have been discriminated against until now in courts. This assumption in turn aggravates the existing problems that many women have in convincing assessors, lawyers, judges and others that they have taken primary responsibility for ensuring that their children's needs are met.

---

[69]Testimony of J M Baerg, 4.

[70]*Tyabji*, 12-13.

[71]*Van Gool*; note that this opinion went against that of the expert assessor.

[72]*Doise*.

Other Recent Trends in BC Cases:

Two recent decisions of the BC Supreme Court and Court of Appeal,[73] mentioned earlier, shed light on trends that contribute to the difficulties that women experience in affirming their links with children. The judge in *Doise* relied on several principles for custody determination set out by the trial judge in *Van Gool*. These principles were left undisturbed by the Court of Appeal in *Van Gool* and they have been hailed as putting fathers on an equal footing with mothers:[74]

> 1. The fact that the petitioner will work outside the home, leaving the children to be cared for by others for a large part of the time, should not be decisive against him so long as he can "provide a good home."
>
> 2. The tender years doctrine has little application in present society, nor is the fact that one of these children is a young girl of much significance.
>
> 3. Conduct by the parent with interim custody which tends to poison the relationship of the children with the other parent or hinder an on-going relationship with their father, may be a factor in the award of permanent custody.
>
> The court is entitled to consider a parent's propensity for honesty or dishonesty, and his or her social responsibility, in relation to the ultimate welfare of the child . . . and to favour the party who has not exaggerated or overstated his or her case.

In both *Doise* and *Van Gool*, the mothers were the primary caregivers of the children, and apparently very competent ones. Nonetheless, the mothers were found to put their own interests ahead of those of the children and lost custody. Mrs Van Gool was viewed as being inflexible "in respect of any access other than what was specified." In other words, although she obeyed the law, she did not go beyond this to facilitate the father's contact with the children. She was deemed therefore to be "quite capable of using the children as a weapon in her 'war' with the petitioner." Similarly, Mrs Doise through her act of taking the children to Germany and depriving Mr Doise of contact was seen to counteract any evidence that she was primary caregiver and that the status quo clearly rested with her.

---

[73]*Van Gool* v *Van Gool*, Vancouver Registry CA016719, [1993] B.C.J. No. 2758, B.C.C.A., and Lambert, Rowles and Wood, JJA, affirming the judgment of MacDonald J of the B.C.S.C. in *Van Gool* v *Van Gool*, Vancouver Registry No. D081601, B.C.S.C. [1993] B.C.J. No. 180.

[74]Needham, "Ruling" 9 February 1944, A2 and Raeside, "Men" 2 March 1994, A24.

Is it a coincidence that in *Van Gool* and *Doise*, primary caregiving was viewed as a secondary consideration, that the mothers were constructed as exaggerators or liars, that they were viewed as unfriendly parents? Mr Justice Spencer apparently ignored the first principle in *Tyabji* as well as the fact that one expert and a mediator/counsellor said that Tyabji was more likely to facilitate contact of Sandana with the children than Sandana was to facilitate Tyabji's contact. This potential problem was related to the acrimony between Tyabji and Sandana's relatives.

The primary caregiver factor *has* been used in some cases to acknowledge the primary caregiving labour of women. However, as soon as evidence of a woman's career or educational commitment comes into play — or indeed some other evidence of the mother's "selfishness" or self-interest — it tends to be assumed that she no longer had an interest in caregiving, or that she was not in fact the primary caregiver. The dichotomy of primary caregiver and "careerist" tends to be noted mainly in relation to mothers, and not fathers.

Where do we go from here?

Can we move beyond Tyabji? Does this case really herald a new era of gender neutral custody decision-making? When we look at the political economy of paid work, family relations, gender, I am not so sure. As Patricia and Hugh Armstrong have shown so clearly in the latest edition of *The Double Ghetto*, in Canada today, there is still women's work and men's work. Furthermore, the work that most women do has changed very little over the last 50 years. The nature of women's work in the home and in the labour force reinforces and perpetuates the division of labour by sex, in many complex ways. Although the *nature* of women's work in the labour force has not changed dramatically, their *rate* of participation has gone up. But women seem to have relatively little choice in terms of who provides care for their children:

> Those who stay home with children are almost all women; those with paid employment who are primarily responsible for arranging child care are almost all women (unless they are lone-parent fathers); and many more employed women than employed men participate in the various aspects of child care.[75]

> The Armstrongs also point out that although there has been enormous growth in the labour force participation of women with young children, the *actual* number of women in the labour force with children under the age of six has been declining since 1971. They suggest that women may be solving child-care problems by simply not having children.[76]

---

[75]Armstrong and Armstrong, *Double Ghetto,* 109.

[76]Ibid., 184.

Children remain a contested terrain within this political economy. I do not want to assert a "special" claim for mothers. But the reality is that women's experience of mothering remains different from men's of fathering, as a result of socially constructed and economically influenced differences that are deeply embedded in the structures of Canadian society. Attempting to determine neutrally what the best interests of children are in this context is arguably an impossibility.

Yet child custody law moves inexorably on in a direction that tries to eliminate gender from decision-making, consistent with legal liberalism.[77] Many of the gender neutral trends, and the initiatives to remove adversarial language from the lexicon, such as custody and access, in fact may diminish the ability of women's voices to be "heard" in custody and access determinations.[78] We are not seen to be primary caregivers any longer, despite the clear evidence that we are. We are not permitted to seek distance or independence from unsatisfactory relationships if we are seen to be depriving our children of their fathers. Fathers are permitted to be fulltime labourers so long as they provide a good home. But are mothers?

---

[77]See Department of Justice, Canada, *Custody and Access: Public Discussion Paper* (March 1993); Nicholas Bala and Susan Miklas, *Rethinking Decisions About Children: Is the "Best Interests of the Child" Approach Really in the Best Interests of Children*? (Toronto: Policy Research Centre on Children, Youth and Families, 1993).

[78]See Susan B Boyd, "W(h)ither Feminism? The Department of Justice Public Discussion Paper on Custody and Access," Unpublished manuscript, UBC Faculty of Law, 1994.

EXPANDING THE 'FAMILY': SHOULD LESBIAN AND GAY RELATIONSHIPS BE DOMESTICATED?

facilitated by

Susan B Boyd

November 10, 1994

Colloquium readings:

Cossman, Brenda. "Family Inside/Out." *University of Toronto Law Journal* 44 (1994): 1-39.

Robson, Ruthann. "Resisting the Family: Repositioning Lesbians in Legal Theory." *Signs* 19 (Summer 1994): 975-96.

Arnup, Katherine. "'We Are Family': Lesbian Mothers in Canada." *Resources for Feminist Research* 20, no. 3/4 (1994): 101-07.

Ontario Law Reform Commission, *Report on the Rights and Responsibilities of Cohabitants Under the Family Law Act* (1993). (excerpts)

As a legal scholar concerned with issues of family law and child custody, Susan Boyd is at the intersection of law and sociology. She holds that the sociological realities of increasing numbers of single parents and non-traditional families must be reflected in legislation concerning family issues.

The readings suggested by Professor Boyd serve both to question the underpinnings of family law and to examine the issues surrounding lesbian and gay relationships as well as how these relationships are dealt with in law. Both Professor Boyd and the writers of the suggested readings concur that family law, particularly in its treatment of individual lesbians and gay men, has implications for the gay rights movement, for feminism, and for society as a whole.

In the summer of 1995 Ontario legislators defeated Bill 167, a bill that described gay and lesbian relationships as parallel to common law heterosexual marriages; it would have given partners the same legal

status in Canadian law as common law partners. Susan Boyd supported bill 167 and was disappointed, as a geographically distant but interested observer, that the bill did not pass. Since white, middle-class heterosexual marriages have been normative in family law, Bill 167 was considered by many observers to be a positive step toward de-centering marriage as the norm.

Current Canadian family law is firmly rooted in the archetypical situation of a two parent family with children cared for by a mother who does not work outside the home. Some colloquium participants noted that this type of "Father Knows Best" or "Ozzie and Harriet" family situation was more rooted in television sitcoms than in reality. As well, it is only recently that there has been a recognition that this type of presentation of one-dimensional family situations has long been damaging to those excluded and marginalized by a patriarchal society and to those unable to escape abusive situations. There is, both in the media and in personal experience, abundant evidence of suffering by people different from what is so frequently presented as the norm.

It is clear that any contemporary debate on family issues must broaden the definition of family to include at least some of those previously excluded.

The model of common law partnerships is one that many people in the gay rights lobby movement find congenial to their aims of formal and legal equality. Often gay activists consider partner benefits as only just and reasonable, rather than any kind of special treatment, it is a means of righting historical wrong. On the other hand, the majority of taxpayers and legislators are often inclined to think that the extension of spousal benefits to same-sex partners is a "gift," another example of special treatment for yet another vociferous lobby group. There are some obvious parallels with certain Amerindian attempts to redress historical injustices.

The progress that has been made in according spousal benefits and legal rights and obligations to same-sex couples has been, in Ontario at least, to lesbians in stable, monogamous relationships. Clearly, the motto "we are family" applies. Family law legislators approve of the same elements of permanence, intimacy, sharing, and interdependence that may characterize (and/or idealize) heterosexual relationships. Nevertheless, there are lesbian and gay activists who deplore the tactics of the "we are family" movement, suggesting that the oppressive patriarchal structure of traditional families needs to be challenged not augmented. Some lesbians and gay men respond that the best way to subvert and reform families is from within; the strategic decision to opt into the system means that they can fight from within rather than from the outside.

Others point out that as lesbians and gay men they are definitely currently excluded both *de facto* and *de jure*; they are not family and do not aspire to be family. Since the marriage model and nuclear family appear to be collapsing, there is no point in trying to opt into a dying

institution. As well, they argue that the strategy of opting into a family model tends to further marginalize those who are not in conjugal relationships and that such fragmentation of the gay and lesbian movement is ultimately damaging. Given these diverse points of view, it is clear that any concept of a monolithic gay and lesbian community is a myth.

One alternative to family status is the formation of legal entities called Registered Domestic Partners which confer the same rights on lesbian and gay partners as on unmarried heterosexual couples. For legal purposes the people involved are treated not *as* spouses but *like* spouses. Registration would be optional, just as a marriage ceremony is not obligatory for heterosexual couples. Clearly, registration would clarify who has the right to make decisions in health matters and to act on behalf of an incapacitated partner; this is an increasingly important consideration given the AIDS epidemic.

Nevertheless, such registration has not been entirely successful in the jurisdictions, such as Denmark and Sweden, where it has been implemented. As one participant pointed out, whenever there is regulation, there is the potential for arbitrary and oppressive measures and such has been the case in some parts of Scandinavia.

Susan Boyd notes that common-law heterosexual relationships have only had status in family law for a short time, approximately seventeen years in Canada. Thus, there is no need for pessimism concerning the ultimate recognition of same-sex partners. Family law, as all law, is conservative and moves slowly, but in the not so distant future, family law will expand to include lesbian and gay relationships. In the meantime there is value simply in debating the issues.

Rosemary Halford
Humanities Research Group
University of Windsor

PRIVACY: WHAT IS PRIVATE . . . WHAT IS NOT? A STROLL DOWN THE INFORMATION HIGHWAY

Ann Cavoukian

In the context of information, drawing a distinction between information that is public and information that should remain private is a very important exercise. It goes to the very heart of the rights and freedoms that we cherish in a democracy such as ours. I will outline why it is important to distinguish between what is public and what is private by exploring the notion of privacy — what privacy means to different people, why it is at the heart of a democratic society, and what laws various countries have to ensure its protection. Then I will talk about the *information highway*, whatever that may be, and take you down two paths which it could ultimately take.

Everyone seems to value their privacy, in some form or another. Public opinion polls tell us this again and again. While privacy means different things to different people, it is something that we value a great deal, but generally take for granted, perhaps precisely because we have it so freely. It has been said that the rights we cherish the most are often the ones we take for granted, until such time that they are no longer freely available or are threatened in some way. This appears to be the case with privacy — you don't notice how important it is until it is taken away from you. In this day of staggering advances in computer technology, networked communications, and database development, a number of factors are conspiring to diminish, if not entirely eliminate, the privacy we enjoy today.

If that sounds rather ominous, I offer no apology. The time has come to be alarmist. *This* is the time to sound the alarms and have people take note, if privacy as we now know it, is to be preserved and carried into the next century. Construction on the highway is just about to begin.

Definitions of Privacy

First, let us look at some definitions of privacy, some of which are lengthy and detailed, while others are as simple as the following — just "the right to be left alone." This oft-quoted phrase was made by Justice

Brandeis, a Justice of the Supreme Court of the United States, in 1890.[1] In an effort to curtail the spread of "idle gossip," Warren and Brandeis wrote an article in the Harvard Law Review extolling the virtues of privacy, and admonishing the gossip-mongers of the day. Remember that this was well in advance of the time of computers, e-mail, voice mail or the Internet; one can only imagine what he would have thought today!

A more detailed definition of privacy, focusing on solitude, autonomy and human dignity, is the following:

> Privacy is a concept related to solitude, secrecy and autonomy, but it is not synonymous with these terms; for beyond the purely descriptive aspects of privacy as isolation from the company, the curiosity and the influence of others, privacy implies a normative element: the right to exclusive control of access to private realms . . . any invasion of privacy constitutes an offense against the rights of personality — against individuality, dignity, and freedom.[2]

Another definition, which focuses more on physical access to a person, is:

> The extent to which we are known to others, the extent to which others have physical access to us, and the extent to which we are the subject of others' attention.[3]

My topic is *informational privacy* or *data protection*, as it is commonly referred to in Europe. This relates to the protection of what is called *personal information*, which is any type of identifiable information associated with you through your name or an identifying number such as the Social Insurance Number. The most widely used definition of informational privacy was developed by privacy veteran Allan Westin, in his seminal work, *Privacy and Freedom*, in 1967: "The claim of individuals, groups or institutions to determine for themselves when, how, and to what extent information about them is communicated to others."[4]

---

[1]Samuel Warren and Louis Brandeis, "The Right to Privacy," *Harvard Law Review* 4 (1890): 193-220.

[2]Arnold Simmel as cited in David H Flaherty, *Protecting Privacy in Surveillance Societies* (Chapel Hill: University of North Carolina Press, 1989), 9.

[3]Ruth Gavison,"Privacy and the Limits of the Law," *Philosophical Dimensions of Privacy: An Anthology* in Ferdinand D Schoeman, ed. (Cambridge: Cambridge University Press, 1984), 379.

[4]Allan Weston, *Privacy and Freedom* (New York: Atheneum, 1967), x.

Informational Self-Determination

You may have noticed that the central issue here is one of control: control over information about you that is circulating out there, in the electronic maze of computers, networks, and databases. The issue of control is at the heart of privacy protection. The Germans have developed a unique term for this — "informational self-determination." In 1983, the German constitutional court ruled that all citizens had a right to informational self-determination, or the ability to determine for oneself how one's information would be used, and to whom it would be disclosed. The importance of this type of self-determination or control resting in the hands of individuals takes on a new meaning in the context of the information highway. Before we go down that path, let me first tell you why I think you should be concerned about present-day threats to your privacy — right here, right now . . . every day.

In 1980, Walter Cronkite noted that when computers are permitted to talk to one another, when they are interlinked, they can spew out a room full of data on each of us that will leave us naked before whoever gains access to that information. There is a need for vigilanance against their misuse, either accidentally or intentionally. Fifteen years ago, Walter Cronkite recognized the threats to privacy associated with the vast amounts of information being compiled on all of us, then stored and interlinked, leaving us virtually naked in the process.

Since that time, the ability to do two things has increased exponentially: the ability to gather massive amounts of personal information and store them in computer databases; and the ability to electronically link diverse databases of information and, in the process, create personal profiles of the individuals involved — the data subjects.

The personal profile of an individual, sometimes called an "electronic dossier," which is created through data collected from a wide range of sources, has aptly been characterized as one's "data shadow," for it acts like a shadow or likeness of the individual, depicted by data obtained not from the individual, but from other electronic sources.

Along with this comes the ability to track and monitor your movements, your activities, your likes and dislikes, your habits and preferences . . . you name it. What you buy, and read, and say, and subscribe to, can say a great deal about you. All of this information is captured electronically every time you use a credit card, make a telephone call, use a grocery discount card, fill out a questionnaire, send in a product warranty card, or apply for a special rebate.

This used to be called "surveillance" or keeping a watchful eye; now it is called "dataveillance" after the primary means by which the surveillance is carried out, namely *data* that is collected, stored, analyzed, and disseminated. And with the imminent arrival of the "information highway," whatever form it takes, promising the convergence of audio, video, and data — the ability to engage in dataveillance will grow exponentially . . . as will the threats to privacy.

Public vs Private information

Before we look at privacy, or lack thereof, on the information highway, let me first try to dispel a myth relating to free speech and information: that *all* information should be in the public domain. It should not. Broadly speaking, there are two types of information: public and private. Under the *Freedom of Information and Protection of Privacy Act*, information intended to be made available to the public under the first part of the *Act* is called a "general record," or a public record; this is intended to be made readily available to the public. The other part of the *Act* relating to the protection of personal privacy, involves "personal information," which is information that is yours and yours alone — it does not belong in the public domain, not unless you *choose* to put it there.

Two types of information . . . two types of rights. One promotes the free disclosure and circulation of public information, the other protects private information from such disclosure, safeguarding its confidentiality. There is no inherent conflict between these two parts of the *Act*, primarily because they pertain to different sets of information holdings. If one thinks of information as one thinks of property, it takes on a new light. Some are in fact calling for the development of an information property right which clearly treats your information as your property — belonging to you, the individual, and no one else. Accordingly, it should be you who would decide what happens to it, and whether you wish to give it to others, or not.

Fair Information Practices

A set of principles developed in 1980 by the OECD (Organization for Economic Co-operation and Development), try to promote the proper protection of personal information. These guidelines, governing the protection of privacy, are commonly referred to as "the code of fair information practices," which is exactly what they do — they create a set of fair practices for the treatment of personal information. These were designed for data *users* such as governments or large organizations, which are in the practice of regularly collecting personal information from individuals. Fair information practices impose duties and responsibilities upon data users (those seeking the information), while conferring rights upon data subjects (those parting with their information). Since you, as individuals, are required to relinquish some of your personal information to the government, for arguably good reasons, the government in turn, must act as its custodian. It is entrusted with the care of the personal information in its safekeeping, and must be held responsible for its protection.

The code of fair information practices contains eight principles that promote the fair treatment of information. Very briefly, these require that personal information be collected directly from the individual to whom

the information pertains; that information must only be used for the purpose for which it was collected, and that the data subject must be informed of that purpose. If the data subject's consent is absent, the information must not be used for any additional (secondary) purposes. The data subject must also be given the opportunity to access his or her information in the data user's custody, and be allowed to request its correction, if mistakes are detected. In addition, an independent "data controller" should be appointed to oversee these operations and to ensure compliance with these principles — some form of oversight.

But if you have nothing to hide . . .

Let me return for a moment to the theme of "public and private" and try to dispel another myth which goes something like this: "If you have nothing to hide, then you have nothing to fear." Wrong. This is a sadly misguided view of how things are meant to operate in a democracy. It is an emotive argument, based on false premises. To begin with, you must remember that we do not live in a police state where we must turn ourselves inside out whenever anyone asks us to do so — no need for probable cause, just tell us what we want. No, that's not how it works. We live in a free and democratic society, not a totalitarian police state. As Weeramantry once said, "the common argument 'I have nothing to fear because I have nothing to hide,' rests upon a total misconception."[5] That misconception is that the state is permitted to assume whatever powers it deems necessary, and that you, the individual citizen, must comply without question. Whatever information is asked of you, you must give; because after all, you have nothing to hide. Under such a regime, there are no realms which could rightly remain shielded from the state, where you could go to explore your personal thoughts, your wishes, your dreams.

The point is not one of having something to hide; it is about respecting the fact that in a free society, we value the notion of having a private life, separate and apart from our public lives — the public selves that we present to our co-workers, our colleagues and neighbours — our public personae.

We must all be able to retreat from time to time into our private spaces, from which we emerge recharged, brimming with energy, creativity, or simply prepared to face another day. Solitude and privacy serve very important roles. If we didn't value these so much, the type of relentless surveillance portrayed in George Orwell's *1984*, where no one was permitted to have a private thought or action or moment, would not strike us as being so repugnant. A highly-acclaimed sociologist,

---

[5]C G Weeramantry, "Collectivism vs Individualism," *The Age Monthly Review* (August 1986), 19.

James Rule, asked in his classic work, *Private Lives and Public Surveillance*,

> Why do we find the world of 1984 so harrowing? Certainly one reason is its vision of life totally robbed of personal privacy, but there is more to it than that. For the ugliest and most frightening thing about that world was its vision of total control over men's lives by a monolithic, authoritarian state. Indeed, the destruction of privacy was a means to this end, a tool for enforcing instant obedience to the dictates of the authorities.[6]

> The state is the creation of a self-governing people. We do not have such rights as the state allots us; rather, it has such powers, and only such powers, as we consent to give to it. All rights not expressly limited are reserved to the people; all powers not expressly granted are denied. It is *never* incumbent on the people to show why they should have rights; the burden of proof is always on those who would restrict them.[7]

So please, keep that in mind the next time that someone asks you what it is you have to hide. Remember that whoever asks you for your personal information must justify why they need it and what they plan to do with it — *not* the other way around. Refuse to be put on the defensive. You have a legislated right to privacy.

Privacy in the Private Sector

In the past, the state or the government was feared as posing the greatest threats to our privacy, with its capacity to peer deeply into our lives through its various arms — law enforcement, taxation, social assistance . . . the list goes on. In the future, however, *government* surveillance may not be the greatest threat to privacy. With the advent of the information highway which will potentially connect everything to everyone, our greatest fears may be associated with the surveillance or "dataveillance" activities of private enterprise. Such privacy-invasive activities as database marketing are already well underway. The information highway will only serve to increase the scale.

Before we run to embrace these new technologies, we may wish to first pause and consider some rules of the road, lest we lose our privacy in the process. Must we willingly submit to the technological determinism that seems to be washing over us like a tidal wave? The availability of our personal information to anyone for the asking will have a number

---

[6]James B Rule, *Private Lives and Public Surveillance* (New York: Schocken, 1974), 19.

[7]Editorial in the *Globe and Mail,* 11 December 1993, A7.

of drawbacks, some of which we may never have contemplated. Consider the following example:

> Many people are aware of telephone wire tapping. But few have heard of Realtime Residential Power Line Surveillance (RRPLS). U.S. law enforcement officials have used a primitive form of RRPLS for years, acquiring billing records from electric companies to find people who are using high-powered lights to grow marijuana. Now devices called "smart meters" are boosting the data-gathering power. . . They can record which electrical appliances an occupant uses, and when.[8]

RRPLS, in combination with other data sources, can create a remarkably detailed account of every move you make. Consider this scenario:

> Contrary to a household's normal pattern, one of its occupants, a 43 year-old married male (according to his driver's license data) arises early one Saturday morning, showers, shaves with his electric razor, and irons some clothes. He buys gas in town, then that night pays for two dinners and two tickets to a show (all on his credit card). After returning home, the stereo is turned on (a rare event according to his RRPLS profile) . . .
>
> The next morning, data indicates an unusually long shower, followed by two uses of the hair dryer. The second use is much longer than normal for the male occupant, indicating he probably shared the shower with a long-haired person.
>
> During this time, commercial transaction records indicate the occupant's wife is halfway around the globe, on a business trip paid for by her employer. RRPLS data from her hotel room also indicate an overnight visitor. Within days the couple is inundated with direct mail solicitation from divorce lawyers.[9]

Now, this is only a hypothetical example; hypothetical for today, that is.

Privacy Legislation

The strongest privacy laws tend to be found in Europe, where they apply in scope to both the public and private sectors. Most countries in the European Union (EU) have federal and state privacy laws that apply to information held by government organizations and the private enterprise. That is not the case in North America. In the United States,

---

[8]Rick Crawford, "Techno Prisoners," *Adbusters* (Summer 1994): 21.

[9]Crawford, "Techno Prisoners," 21.

a federal Privacy Act was introduced in 1974, but it was not accompanied by the creation of an oversight agency such as a Privacy Commission to ensure compliance with the Act. Many have said that a good privacy law without an enforcement mechanism to ensure its implementation, is of little value. In Canada, we too have a federal Privacy Act, introduced in 1982, but unlike the United States, we also have a federal Privacy Commissioner to act as a watchdog and to provide the necessary oversight. At a provincial level, a number of provinces now have freedom of information and privacy laws such as the one we have here in Ontario, and fortunately, these have also been accompanied by the appointment of Privacy Commissioners to ensure compliance with their respective laws.

The importance of having an oversight agency (a privacy commission or data protection board) cannot be overstated. What distinguishes a voluntary privacy code from a legislative code of practice is the ability to enforce the latter: for example, if a government organization fails to comply with our privacy law, then any member of the public is free to file a complaint with our office; we will then investigate the matter and make a determination regarding compliance with the law. There is no comparable enforcement mechanism when you don't have a law in place, and a commission watching over it.

While Canada is in a somewhat stronger position than the United States, which has no privacy commission or data protection board, we are similar to them in another respect: our privacy laws apply only to the public sector (to government organizations), with one exception. Quebec is the only province to have enacted privacy legislation extending in scope to the private sector. In January 1994, what is commonly referred to as "Bill 68" was enacted. Bill 68 extends the right of privacy to information held by private sector organizations — credit bureaus, insurance companies, pharmacies, retail stores — any commercial enterprise that holds personal information.

The development of Bill 68 is truly a "first" in North America. The rest of us are watching its implementation very closely. And the good news is that after one year in operation, all appears to be going well. It is "business as usual" according to both the business community in Quebec and the Commission d'accès à l'information, which is the oversight agency watching over the enforcement of this law in Quebec. The business community has been very co-operative and the Commission very helpful, and as a result, there appears to have been little fallout from the introduction of this Act. The economy has not floundered, and business has not been "brought to its knees." These were the dire predictions made prior to its implementation, and fortunately, they have not proven to be the case.

Technological Solutions

In our future world of networked communications and information highways, where information will know no borders and economies will be global in scale, the boundary between public and private will become less and less clear, perhaps fading away completely in time. This will require laws whose jurisdiction extends to all sectors. Laws will not be enough — far from it. We will also have to turn to technological solutions to protect our privacy. This may ultimately be the only way in which we will be able to preserve a sense of "self" amidst the growing tracking technologies that promote surveillance. What will be needed are technologies of privacy to the rescue. Fortunately, they exist and are becoming more readily available every day.

A number of technological solutions to protect our privacy are emerging — to protect both the integrity of the information transmitted and stored electronically, and the security of that information against interception from unauthorized third parties.

These new technological applications come in the form of encrypted systems, most notably, public key encryption. Cryptographers at the Centre for Mathematics and Computer Science (CWI) in Amsterdam have taken this a step farther by developing a new approach. This approach, known as *blind signatures,* which builds upon public key encryption, permits transactions that, "avoid the possibility of fraud while maintaining the privacy of those who use them." David Chaum, Head of the Cryptography Group at the CWI describes how people would use the equivalent of different pseudonyms for different organizations that they did business with, making the compilation of electronic dossiers and personal profiles, impossible.

> They could pay for goods in untraceable electronic cash or present digital credentials that serve the function of a banking passbook, driver's license or voter registration card, without revealing their identity. At the same time, organizations would benefit from increased security and lower record keeping costs.[10]

Therefore, it is indeed possible to harness technology to enhance, rather than erode privacy. Techniques such as Chaum's blind signatures are beneficial to both the individual and the service provider in that they provide heightened security for transactions, while at the same time, allowing for total privacy. How? By precluding the collection and retention of identifiable information, thereby eliminating any possibility of electronically tracing the information back to any one individual. And because new technologies such as the information highway, if left

---

[10]David Chaum, "Achieving Electronic Privacy," *Scientific American* 267, no. 2 (August 1992): 96.

unchecked, will lead to far greater abilities to trace and compile information about us, we must look to technologies of privacy such as encryption, if we wish to preserve our informational privacy in the next century.

Consumer Tips

But let us return to the here and now. There are things that you as individual consumers can do right now to protect your existing level of privacy. We have outlined a number consumer tips in a paper produced by our office called, *Privacy Alert: A Consumer's Guide to Privacy in the Marketplace*[11]. If each of you takes even one of these steps, it could lead to considerable change in the information-seeking practices of the organizations you do business with. Here are some things you can do:

1. QUESTION the need and the purpose for any personal information requested of you. The information is yours. If someone wants it, they should tell you why, and how they plan to use it.

2. Give only the minimum information required to complete a transaction. If in doubt as to the relevance of the information requested, SPEAK UP . . . ASK QUESTIONS.

3. Also ask who will have access to your personal information. Indicate that you do not wish to have your information sold, rented, or exchanged to a third party for marketing purposes.

4. Ask to see your file at the company you are doing business with, to verify the accuracy of your information and have a chance to correct anything that may be wrong.

5. Ask if the company has a privacy or confidentiality policy, and then ask to see it. If they don't have one, ask that one be developed.

6. Wherever possible, pay in cash, thereby minimizing the need to give out any personal information at the time of the transaction.

7. Guard against the use of your social insurance number. Ask for their authority to collect it; does any law require that it be collected?

8. Check your file at your local Credit Bureau on an annual basis. Just as in the use of your annual physical, you should have an annual credit check to make sure that the information contained therein is correct. The

---

[11]Information and Privacy Commissioner/Ontario, *Privacy Alert: A Consumer's Guide to Privacy in the Marketplace*, May 1994.

accuracy of your credit information could have a considerable impact on your credit-worthiness.

9. If you don't want people to have access to your telephone number, use your call blocking feature by pressing *67 before dialing the number you wish to reach.

10. To remove your name from mailing and telemarketing lists, contact the Canadian Direct Marketing Association (CDMA) at (416) 391-2362 or by writing to 1 Concorde Gate, Suite 607, Don Mills, Ontario, M3C 3N6. While it may take three to four months for your request to be processed, it will be worth the wait.

11. Think twice before calling an 800 or 900 number. Your number and the details of your transaction may be recorded and sold to telemarketers.

12. Remember that special rebate offers, contest forms, free information kits and warranty cards are often used as marketing techniques for gathering consumer information. If you can't resist them, then provide only the MINIMUM information and request that the information not be disclosed to any third parties.

13. On any form that you may fill out, whenever an *opt-out* mailing list box is provided, CHECK IT. If there isn't one on the form, add it in.

This is only a summary of the checklist provided in our Privacy Alert paper. If you wish to see the complete list, copies are available from the office of the Privacy Commission, Province of Ontario. While these suggestions offer no guarantees, they will help to safeguard your informational privacy in the marketplace. In the meantime, you, as an informed consumer, can take personal responsibility for protecting your own information by learning about your right to privacy and becoming aware of the actions that place it in jeopardy. Be aware. Be confident. Take control. ASK questions whenever someone asks you for your personal information. While many of the requests made will be quite legitimate, if they are, then there should be no problem telling you why your information is needed and how it will be used.

Conclusion

Privacy laws, technological solutions, and consumer awareness will all be needed to protect our privacy in the future. If we do not actively take some steps now, we may be faced with a future of two possibilities. The path of the information highway will take us down one of the following two roads:

> The choice between keeping information in the hands of individuals or of organizations is being made each time any government or business decides to automate another set of transactions. In one direction lies unprecedented scrutiny and control of people's lives, in the other, secure parity between individuals and organizations. The shape of society in the next century may depend on which approach predominates.[12]

Which would you prefer? . . . Something to think about.

---

[12]Chaum, "Electronic Privacy," 96.

FROM BENTHAM'S PANOPTICON TO THE INFOBAHN: THE POTENTIAL FOR SURVEILLANCE

facilitated by

Ann Cavoukian

February 10, 1995

Colloquium Readings:

Crawford, Rick. "Techno Prisoners." *Adbusters Quarterly* (Summer 1994): 17-23.

Flaherty, David. *Protecting Privacy in Surveliance Societies.* Chapel Hill: University of North Carolina Press, 1989,1-17.

Lyon, David. "Bentham's Panopticon: From Moral Architecture to Electronic Surveillance." *Queen's Quarterly* 98, no. 3 (1991): 596-617.

McAdam, Douglas, James B Rule, Linda Sterns and David Uglow. "Preserving Individual Autonomy in an Information-Oriented Society." In *Computerization and Controversy: Value Conflicts and Social Choices*, eds. Charles Dunlop and Rob Kling, 469-488. Boston: Academic Press,1991.

Office of the Information and Privacy Commissioner/Ontario. *Workplace Privacy: The Need for a Safety Net.* 1993.

Dr Cavoukian began by discussing the way in which the making and interconnection of databases has dramatically increased the potential for surveillance and the consequent risk to personal privacy in contemporary society. She used the metaphor of Bentham's panopticon. Although (as David Lyon's article reminds us) Jeremy Bentham's plan was never put into place, the notion of a penitentiary designed so that prisoners could be seen, watched, and monitored by the guardians, without being able to see those who surveyed them or know they were under observation, remains a useful model for a program of systematic surveillance. In Bentham's eighteenth- and nineteenth-century England the panopticon was to be used by government authorities to further the

interests of the state — in this case to control the actions of convicted criminals serving their term in prison. In Cavoukian's late-twentieth-century Canada (and many other places in the world), the electronic panopticon is in the hands not of government, but of the private sector. Specialists in database marketing collect information to be used in offering goods and services to a skilfully targeted group of consumers.

Here and now, a virtual panopticon exists in the form of computers holding commercial databases accumulating a wide range of "information" about individuals. The facts of name, address, age, marital status, income level, home ownership, and consumer preferences of all kinds can, potentially, be linked with patterns of behaviour, such as travel or shopping as revealed by credit card records. New technologies can be linked with these records to reveal even more about individual behaviour. Most startling is Realtime Residential Power Line Surveillance (RRPLS), which uses "smart meters" to keep track of electricity usage at a very detailed level — so much so that "an individual may inadvertently 'broadcast' an illicit sexual liaison to the commercial world via RRPLS data." The "smart meter" could detect atypical patterns of appliance usage, correlate them with revealing credit card purchases and retail the results to agencies who stand to make a profit on the information. Cavoukian cited this and other examples from Crawford's "Techno Prisoners" article and also spoke of how future technologies will, or might, make it possible to prepare very detailed profiles of individual tastes and activities. She stressed that the private sector, not the government which we used to envisage as "big brother," is where these new technologies of surveillance are being exploited.

In George Orwell's dystopia, people knew they were under surveillance: it was certain and constant, whereas in Bentham's dystopia the prisoners in a panopticon would be unaware that they were being observed. Similarly, in Ann Cavoukian's vision of the future, people will go about their lives unaware that many activities are being recorded.

We should be aware, she says, of the potential for invasion of privacy in massive and networked databases. Surveillance, after all, is not the same thing as security. Agencies from the income tax authorities to the police have legitimate authority to discover and use a wide range of personal information in appropriate circumstances. But businesses and financial agencies do not, and we should not extend such authority to them. In the new panopticon it is not "big brother" who is watching, but "little sister." Control has been internalized by many people in modern society. People are too acquiescent, she argued, too ready to provide their personal information to businesses who ask for it. We should distrust promises that information will be kept "confidential." We should not feel the need to prove we have nothing to hide. We should be more conscious of the value of privacy, even develop a concept of "ownership" of our personal information, or of "informational self-determination." Some concerned individuals are calling for the payment of royalties on personal information.

Ann Cavoukian treated the colloquium to what she called a primer on the privacy laws, especially of Germany and France where data protection legislation is most advanced. In those countries, data protection covers both the public and private sectors, but in North America (with the exception of Quebec) only the public sector is covered. Hence the importance of the provincial Privacy Commissions. Public opinion polls have agreed: in Canada, 92 per cent of persons queried agreed that they were concerned about privacy.

The colloquium discussion focused on particular instances, and on the risk that privacy issues will be lost track of in the dazzle of putting new technologies into place and taking advantage of their potential for efficiency. An example might be projects to link together health records of hospitals, pharmacies, and other agencies. Another might be the "agent" which is expected to appear in people's homes to provide their interface with the information highway. Envisaged as a box sitting on top of the television set, this "digital butler" would be programmed to keep track of our viewing (and perhaps shopping) preferences. Would such valuable but also highly personal information be accessible to the corporate sector? If we find the prospect worrying should we not now take steps to prevent it? In the excitement of setting up such programs, the "dreary questions" of making sure the database is not used to invade personal privacy urgently need to be addressed.

Leslie Howsam
Department of History
University of Windsor

CONTRIBUTORS

Susan B Boyd has been Chair in Feminist Legal Studies at the Faculty of Law, University of British Columbia, since 1992. She teaches family law and feminist legal studies and has published extensively in the fields of feminist legal theory, child custody law, family law, and political economy of law. She is Principal Investigator for a major research grant from the Social Sciences and Humanities Research Council of Canada (SSHRCC) entitled "Challenging the Public/Private Divide: Women, Law and Social Change."

Ann Cavoukian is Assistant Commissioner with the Information and Privacy Commission of Ontario. She has responsibility for protection of personal privacy and for ensuring that provincial and municipal institutions comply with the requirements of the *Freedom of Information and Protection of Privacy Acts*. Her most recent publication is *Who Knows: Safeguarding Your Privacy in a Networked World*, written with Don Tapscott.

Richard Lee's thirty year career as a social anthropologist has focused on the !Kung San of Botswana and the indigenous peoples of northern British Columbia and Labrador. Dr Lee's many publications include more than sixty articles and book chapters. Books include *The Dobe Ju/'hoansi* (1993) which is the second edition of *The !Kung San: Men, Women and Work in a Foraging Society* (1980); *Politics and History in Band Societies* (1982); *Kalahari Hunter-Gatherers: Studies of the !Kung San and their Neighbours* (1976); *The New Native Resistance: Indigenous People's Struggles and the Responsibility of Scholars* (1974). He has been Professor of Anthropology at the University of Toronto since 1976.

SUGGESTED FURTHER READINGS

BOOKS

Aaron, Daniel, ed. *The Inman Diary: A Public and Private Confession.* Cambridge: Harvard University Press, 1985.

Reviews:
John Patrick Diggins. *New England Quarterly* 59 (June 1986): 282-85.

Fred Hobson. *Kenyon Review* 9 (Winter 1987): 139-42.

Lewis P Simpson. *Sewanee Review* 95 (Winter 1987): 149-62.

Julian Symons. *Times Literary Supplement* 4319 (10 January 1986): 41-42.

Altman, I, and E H Zube. *Public Places and Spaces*. New York: Plenum, 1989.

Altman, Irwin. *The Environment and Social Behaviour: Privacy, Personal Space, Territory and Crowding*. Monterey, CA: Brooks/Cole, 1975.

Arcand, Bernard. *The Jaguar and the Anteater: Pornography Degree Zero*. London: Verso, 1993.

Armstrong, Patricia and Hugh. *The Double Ghetto: Canadian Women and Their Segregated Work*. 3d ed. Toronto: McClelland & Stewart Inc., 1994.

Bagdikian, Ben H. *The Media Monopoly*. 4th ed. Boston: Beacon Press, 1992.

Baird, Robert M, and Rosenbaum, Stuart E. *Pornography: Private Right or Public Menace?* Buffalo: Prometheus Books, 1991.

Review:
Sara Suleri. *Yale Review* 80 (April 1992): 197-206.

Barron, Jerome A. *Public Rights and the Private Press.* Toronto: Butterworth's, 1981.

Bayer, Ronald. *Private Acts, Social Consequences: AIDS and the Politics of Public Health.* New York: Free Press; London: Collier Macmillan, 1989.

Belsey, Andrew. *Ethical Issues in Journalism and the Media*. London and New York: Routledge, 1992.

Beniger, J. *The Control Revolution: Technological and Economic Origins of the Information Society*. Cambridge: Harvard University Press, 1986.

Bennett, Colin. *Regulating Privacy: Data Protection and Public Policy In Europe and the United States*. Ithaca: Cornell University Press, 1992.

Bensman, Joseph, and Robert Lilienfield. *Between Public and Private: The Lost Boundaries of the Self*. New York: Free Press, 1979.

Berkshire Conference on the History of Women. *Gendered Domains: Rethinking Public and Private in Women's History: Essays from the Seventh Berkshire Conference on the History of Women*. Ithaca, NY: Cornell University Press, 1992.

Berman, J. and J Goldman. *A Federal Right of Information Privacy: The Need for Reform*. Washington DC: Benton Foundation Project on Communications and Information Policy Options, 1989.

Beisele, Megan. *Women Like Meat: The Folklore and Foraging Ideology of the Kalahari Ju/'hoan*. Bloomington and Johannesburg: Indiana University Press and Witwatersrand University Press, 1993.

Brake, Mike. *Public Order and Private Lives: The Politics of Law and Order*. London and New York: Routledge, 1992.

Branscomb, Anne W. *Who Owns Information? From Privacy to Public Access*. New York: Basic Books, 1994.

Brody, E W. *Communication Tomorrow: New Audiences, New Technologies, New Media*. New York: Praegar, 1990.

Browne, William Paul. *Private Interests, Public Policy, and American Agriculture*. Lawrence: University Press of Kansas, 1988.

Review:
David N Balaam. *Agricultural History* 62 (Fall 1988): 105-06.

Burns, R. R Samarajiva, and R Mukherjee. *Customer Information: Competitive and Privacy Implications*. Columbus, OH: National Regulatory Research Institute, 1992.

Campbell, Duncan, and Steve Connor. *On the Record: Surveillance, Computers, and Privacy*. London: Michael Joseph, 1986.

Carroll, Jim, and Rick Broadhead. *The Canadian Internet Handbook, 1995 Edition*. Scarborough, ON: Prentice Hall Canada, 1995.

Castells, Manuel. *The Informational City: Information Technology, Economic Restructuring and the Urban-Regional Process*. London: Basil Blackwell, 1989.

Cavoukian, Ann and Don Tapscott. *Who Knows: Safeguarding Your Privacy in a Networked World*. Toronto: Random House Canada, 1995.

Reviews:
Jack Hope. *Books In Canada* (November 1995): 16.

Michael Kane. *Vancouver Sun* (11 October 1995).

Privacy Files. (October 1995): 15

Privacy Journal. (October 1995): 7.

Julia Wyeth. *Canadian Business Review* (Winter 1995): 29.

Cerasano, S P, and Marion Wynne-Davies. *Gloriana's Face: Women, Public and Private, in the English Renaissance*. Detroit: Wayne State University Press, 1992.

Chiseri-Strater, Elizabeth. *Academic Literacies: The Public and Private Discourse of University Students*. Portsmouth, NH: Boynton/Cook, 1991.

Chomsky, Noam. *Necessary Illusions: Thought Control in Democratic Societies*. Montreal: CBC Enterprises, 1989.

Chomsky, Noam, and Edward S Herman. *Manufacturing Consent: The Political Economy of the Mass Media*. New York: Pantheon Books, 1988.

Cleaver, Barry et al. *Handbook Exploring the Legal Context for Information Policy in Canada*. Toronto: FAXON, 1992.

Coward, Harold, Rainer Knopff, and Peter Fitzgerald-Moore, eds. *Privacy*. Community Seminar Series, no. 9. Calgary: Calgary Institute for the Humanities, 1989.

Damas, David, ed. *Band Societies,* Bulletin 228. Ottawa: National Museum of Canada, 1969.

Dandeker, C. *Surveillance, Power and Modernity: Bureaucracy and Discipline from 1700 to the Present Day*. Cambridge, England: Polity Press, 1990.

DeVeber, L L. *Public Policy, Private Voices: The Euthanasia Debate*. Toronto: Human Life Research Institute, 1992.

Di Leonardo, Michaela, ed. *Gender at the Crossroads of Knowledge*. New Haven: Yale University Press, 1991.

Donahue, John D. *Prisons for Profit: Public Justice, Private Interests*. Washington, DC: Economic Policy Institute, 1988.

EKOS Research Associates. *Privacy Revealed: The Canadian Privacy Survey*. Ottawa: EKOS Research Associates, 1992.

Ellis, David. *Split Screen: Home Entertainment and the New Technologies*. Toronto: Friends of Canadian Broadcasting, 1992.

Elshtain, Jean Bethke. *Public Man, Private Women: Women in Social and Political Thought*. Princeton: Princeton University Press, 1981.

Reviews:
Prudence Allen. *Review of Metaphysics* 38 (September 1984): 118-20.

Mary R Lefkowitz. *Partisan Review* 51 (1984): 315-20.

Ernste, Huib, and Carlo Jaeger, eds. *Information Society and Spatial Structure*. London: Bellhaven Press, 1989.

Flaherty, David H. *Protecting Privacy in Surveillance Societies: The Federal Republic of Germany, Sweden, France, Canada and the United States*. Chapel Hill: University of North Carolina Press, 1989.

Review:
Colin J Bennet. *Canadian Journal of Political Science* 23, no. 3 (September 1990): 605-06.

Frank, Gregory, ed. *Information Technology: The Public Issues.* Manchester: Manchester University Press, 1987.

Gandy, O H Jr. *The Panoptic Sort: A Political Economy of Personal Information*. Boulder, CO: Westview Press, 1993.

Gerbner, George, Hamid Mowlana, and Herb Schiller, eds. *Invisible Crises.* Boulder, CO: Westview Press, 1994.

Giddens, Anthony. *The Consequences of Modernity*. Stanford: Stanford University Press, 1990.

Goffman, E. *Relations in Public: Microstudies of the Public Order*. New York: Basic Books, 1971.

_____. *Behaviour in Public Places: Notes on the Social Organization of Gatherings*. New York: Free Press, 1963.

Googins, Bradley K. *Work/Family Conflicts: Private Lives, Public Responses*. New York: Auburn House, 1991.

Greenawalt, K. *Legal Protections of Privacy*. Washington, DC: Office of Telecommunications Policy, 1975.

Hampshire, Stuart. *Public and Private Morality.* Cambridge and New York: Cambridge University Press, 1978.

History of Private Life. Series editors Philippe Ariès and George Duby. Vol. 1 *From Pagan Rome to Byzantium*. Ed. Paul Veyne. Trans. Arthur Goldhammer. London and Cambridge: Bellknap Press of Harvard University Press, 1987. Vol 2 *Revelations of the Medieval World*. Ed. Georges Duby. Trans. Arthur Goldhammer, 1988. Vol. 3. *Passions of the Renaissance*. Ed. Roger Chartier. Trans. Arthur Goldhammer, 1989. Vol. 4. *From the Fires of Revolution to the Great War*. Eds. Philippe Ariès and Georges

Duby. Trans. Arthur Goldhammer, 1990. Vol. 5. *Riddles of Identity in Modern Times*. Eds. Antoine Prost and Gérard Vincent. Trans. Arthur Goldhammer, 1991.

Howell, Nancy. *The Demography of the Dobe !Kung*. New York: Academic Press, 1979.

Kampelman, Max. *Entering New Worlds: The Memoirs of a Private Man in Public Life*. New York: Harper Collins, 1992.

Review:
David Brock. *Commentary* 93 (February 1992): 60-62.

Kelley, Mary. *Private Woman, Public Stage: Literary Domesticity in Nineteenth-Century America.* New York: Oxford University Press, 1984.

Reviews:
Nina Baym. *American Quarterly* 36 (Fall 1984): 593-97.

Wai-chee Dimock. *Georgia Review* 38 (Winter 1984/1985): 63-77.

Susan K Harris. *Women's Studies* 12 (1986): 549-69.

Judie Newman. *Journal of American Studies* 20 (December 1986): 468-69.

Sarah Stage. *Journal of American History* 71 (December 1984): 641-42.

Knowlton, Winthrop, and Richard Zeckhauser. *American Society: Public and Private Responsibilities*. Cambridge, MA: Ballinger Publishing, 1986.

Review:
Leslie Lenkowsky. *Commentary* 84 (September 1987): 338-62.

Larson, Erik. *The Naked Consumer: How Our Private Lives Become Public Commodities.* New York: H Holt, 1992.

Lee, Richard. *The !Kung San: Men, Women and Work in a Foraging Society*. Cambridge and New York: Cambridge University Press, 1979.

Lenz, Elinor, and Barbara G Myerhoff. *The Feminization of America: How Women's Values Are Changing Our Public and Private Lives*. Los Angeles: J P Tarcher; New York: St Martin's Press, 1985.

Review:
Ann-Janine Morey. *Cross Currents* 36 (Summer 1986): 239-42.

Levine, Phillippa. *Private Lives and Public Commitment: Feminist Resistance in England, 1860-1900.* Cambridge, MA: Blackwell, 1990.

Review:
Kathleen E McCrone. *Canadian Historical Review* 72 (December 1991): 595-97.

Linowes, David F. *Privacy in America: Is Your Private Life in the Public Eye?* Urbana: University of Illinois Press, 1989.

Lorimer, Rowland, and Jean McNulty. *Mass Communication in Canada.* Toronto: McClelland & Stewart, 1991.

Lyon, David. *The Information Society: Issues and Illusions.* Cambridge, England: Polity Press, 1988.

_____. *Citizenship and Surveillance in the Information Age.* Working paper, Studies in Communication and Information Technology, Kingston: Queen's University, 1991.

Madsen, Wayne. *Handbook of Personal Data Protection.* London: Macmillan, 1992.

Margulis, S T, ed. *Privacy.* Stony Brook, NY: Environmental Design Research Association, 1974.

Marshall, Sherrin. *Women in Reformation and Counter-Reformation Europe: Public and Private Worlds.* Bloomington: Indiana University Press, 1989.

Reviews:
Chamarie J Blaisdell. *Church History* 60 (December 1991): 548-49.

Martha Howell. *Social History* 16 (May 1991): 233-36.

Phyllis Mack. *Renaissance Quarterly* 46 (Spring 1993): 176-77.

Jill Raitt. *Sixteenth Century Journal* 21 (Winter 1990): 721.

Barbara J Todd. *Canadian Journal of History* 25 (December 1990): 408-09.

Mayne, Judith. *Private Novels, Public Films.* Athens: University of Georgia Press, 1988.

Maza, Sarah. *Private Lives and Public Affairs: The Causes Celebres of PreRevolutionary France.* Berkeley: University of California Press, 1993.

McDonald, Douglas. *Private Prisons and the Public Interest.* New Brunswick: Rutgers University Press, 1990.

McManus, Thomas E. *Commentary: Telephone Transaction-Generated Information: Rights and Restrictions.* Chicago: Western Reserve Collaborative, 1991.

Miller, A. *Assault on Privacy.* Ann Arbor: University of Michigan Press, 1971.

Moore, Barrington. *Privacy: Studies in Social and Cultural History.* Armonk, NY: ME Sharpe, 1984.

Mosco, Vincent. *The Pay-Per Society: Computers and Communication in the Information Age: Essays in Critical Theory and Public Policy.* Toronto: Garamond Press, 1989.

Olasky, Marvin N. *Corporate Public Relations and American Private Enterprise: A New Historical Perspective.* Hillsdale, NJ: L Erlbaum Associates, 1987.

Review:
Terry Hynes. *Journalism History* 15 (Spring 1988): 46-67.

O'Malley, Padraig. *The AIDS Epidemic: Private Rights and the Public Interest.* Boston: Beacon Press, 1989.

Pahl, J M. *Private Violence and Public Policy: The Needs of Battered Women and the Response of Public Services.* London and Boston: Routledge & Kegan Paul, 1985.

Posner, Richard. *The Economics of Justice.* Cambridge: Harvard University Press, 1981.

Rapping, Elayne. *The Movie of the Week: Private Stories, Public Events.* Minneapolis: University of Minnesota Press, 1992.

Reiter, Rayna, ed. *Toward an Anthropology of Women.* New York: Monthly Review Press, 1975.

Rosaldo, Michelle, and Louise Lamphere, eds. *Women, Culture and Society.* Stanford: Stanford University Press, 1974.

Rothfeder, Jeffery. *Privacy for Sale: How Computerization Has Made Everyone's Private Life an Open Secret.* New York: Simon & Schuster, 1992.

Rule, James. *Private Lives and Public Surveillance: Social Control in the Computer Age.* New York: Schocken Books, 1974.

Rule, James B et al. *The Politics of Privacy: Planning for Personal Data Systems As Powerful Technologies.* New York: Elsevier, 1980.

Schoeman, Ferdinand D, ed. *Philosophical Dimensions of Privacy: An Anthology.* Cambridge: Cambridge University Press, 1984.

Seipp, D J. *The Right to Privacy in American History.* Cambridge: Harvard University Program on Information Resources Policy, 1978.

Seltzer, Vivian Center. *Psychosocial Worlds of the Adolescent: Public and Private.* New York: Wiley, 1989.

Sherman, Suzanne. *Lesbian and Gay Marriage: Private Commitments, Public Ceremonies.* Philadelphia: Temple University Press, 1993.

Smith, Robert Ellis. *Privacy: How to Protect What's Left of it.* Garden City, New York: Doubleday, 1980.

Smith, Peter. *Public and Private Value: Studies in the Nineteenth-Century Novel.* New York: Cambridge University Press, 1984.

Reviews:
Cicely Palser Havely. *Notes and Queries* 33 (March 1986): 120-21.

Alan Kennedy. *University of Toronto Quarterly* 56 (Spring 1987): 443-51.

John Kuchich. *Journal of English and Germanic Philology* 87 (January 1988): 128-30.

Stein, Michael Carl. *The Ethnography of an Adult Bookstore: Private Scenes, Public Places.* Lewiston, NY: Edwin Mellen Press, 1990.

Sypher, Eileen. *Wisps of Violence: Producing Public and Private Politics in the Turn-of-the-Century British Novel.* London: Verso, 1993.

Tapscott, Don. *Paradigm Shift: The New Promise of Information Technology.*

Turkel, Gerald. *Dividing Public and Private: Law, Politics, and Social Theory.* Westport, CT: Praeger, 1992.

Trubow, George B. *Privacy Law and Practise, Volumes 1, 2 and 3.* New York: Matthew Bender, 1989.

Ursel, Jane. *Private Lives, Public Policy: One Hundred Years of State Intervention in the Family.* Toronto: Women's Press, 1992.

Venne, Michel. *Vie privée et démocratie à l'ère de l'informatique.* Quebec City: Institut québècois de recherche sur la culture, 1994.

Vickers, B. *Public and Private Life in the Seventeenth Century: The Mackenzie-Evelyn Debate.* Delmar, NY: Scholars' Facsimiles & Reprints, 1986.

Review:
Donald Low. *Notes and Queries* 35 (September 1988): 373-74.

Waldron, Jeremy. *The Right to Private Property.* Oxford: Clarendon Press, 1988.

Reviews:
Lawrence C Beck *Philosophy & Public Affairs* 21 (Spring 1992): 196-206.

Alan Ryan. *Journal of Philosophy* 88 (March 1991): 155-59.

Dudley Knowles. *Philosophical Quarterly* 40 (January 1990): 116-19.

John Dunn. *Times Literary Supplement* 4492 (5-11 May 1989): 489-90.

Westin, A. *Privacy and Freedom.* New York: Atheneum, 1970.

Wiltshire, Susan Ford. *Public and Private in Vergil's Aeneid.* Cambridge: University of Massachussetts Press, 1989.

Reviews:
William Clarence Johnson. *Clio* 20 (Winter 1991): 570-73.

Sara Mack. *American Journal of Philology* 111 (Winter 1990): 570-73.

Zomchick, John P. *Family and the Law in Eighteenth-Century Fiction: The Public Conscience in the Private Sphere.* Cambridge: Cambridge University Press, 1993.

Review:
Matthew Grenby. *History* 79 (February 1994): 147-78.

ARTICLES

Aarons, Victoria. "A Perfect Marginality: Public and Private Telling in the Stories of Grace Paley." *Studies in Short Fiction* 27 (Winter 1990): 35-43.

Acconci, Vito. "Public Space in a Private Time." *Critical Inquiry* 16 (Summer 1990): 900-18.

Adler, Thomas P. "Public Faces, Private Graces: Apocalypse Postponed in Arthur Kopit's End of the World." *Studies in the Literary Imagination* 21 (Fall 1988): 107-18.

Altman, I. A Vinsel, and B Brown. "Dialectic Conceptions in Social Psychology: An Application to Social Penetration and Privacy Regulation." *Advances in Experimental Social Psychology* 14 (1991): 108.

Altman, Irwin. "Privacy Regulation: Culturally Universal or Culturally Specific?" *Journal of Social Issues* 33 (1977): 66.

Annas, George J. "Birth, Death and the Criminal Law: The New Politics of Privacy." In *A Time to Be Born and a Time to Die*, ed. Barry S Kogan, 35-54. Hawthorne, NY: Aldine de Gruyter, 1991.

Arms, Caroline R. "A New Information Infrastructure." *Online* 14, no.5 (September 1991): 15-22.

Bacard, André. "Privacy in the Computer Age." *The Humanist* 53 (January/February 1993): 40-41.

Baker, R C, R Dickerson, and S Hollander. "Big Brother 1994: Marketing Data and the IRS." *Journal of Public Policy and Marketing* 5 (1988): 237.

Baldwin, J Norman. "Public Versus Private: Not That Different, Not That Consequential." *Public Personnel Management* 16 (Summer 1987): 181.

Barratt, Eileen. "Phone-y Privacy." *The Quill* 80 (October 1992): 42.

Bassanese, Fiora A and Robert A Martin. "Private Lives and Public Lies: Texts by Courtesans of the Italian Renaissance." *Texas Studies in Literature and Language* 30 (Fall 1988): 295-319.

Baxter, L, and W Wilmont. "Secret Tests: Social Strategies for Acquiring Information About the State of the Relationship." *Human Communications Research* 11, no. 2 (Winter 1984): 171-201.

Batts, John Stuart. "Private Chronicles in Public Places." *Canadian Literature* 121 (Summer 1989): 12-25.

Behr, Shulamith. "The Private, the Public and the Primitive." *Art History* 16 (March 1993): 178-84.

Berg, J, and M Clark. "Differences in Social Exchange between Intimate and Other Relationships: Gradually Evolving or Quickly Apparent?" In *Frienship and Social Interaction*, eds. V Derlaga and B Winstead, 101-128. New York: Springer-Verlag: 1986.

Berger, C, and R Calabrese. "Some Explorations in Initial Interaction and Beyond: Toward a Developmental Theory of Interpersonal Communication." *Human Communication Research* 1, no. 2 (Winter 1975): 99-112.

Berry, J N. "Government Police and Libraries." *Library Journal* (1 April 1993): 8; (15 April 1993): 6.

Bettenhausen, Elizabeth. "Personal and Political, Private and Public (Fundamentalism and Politics)." *Christianity and Crisis* 44 (29 October 1984): 394-96.

Bicker, Lyn. "Public and Private Choices: Public and Private Voices." In *Women and World War I: The Written Response*, ed. Dorothy Goldman, 92-112. New York: St. Martin's Press, 1993.

Bleecher, Stephanie. "Public and Private: American Prints Today." *Arts Magazine* 60 (Summer 1986): 114-15.

Bogart, Leo. "Shaping a New Media Policy." *The Nation* (12 July 1993): 57-60.

Born, Daniel. "Private Gardens, Public Swamps: Howards End and the Re-evaluation of Liberal Guilt." *Novel* 25 (Winter 1992): 141-59.

Bowden, Brian P. "Rights of Anonymity and Rights of Solitude: Ethical Information Management in the Private Sector." *Canadian Public Administration* 34, no. 1 (Spring 1991): 101-10.

Braman, Sandra. "Defining Information: An Approach for Policymakers." *Telecommunications Policy* 13, no. 3 (September 1989): 233.

Branscomb, A W. "Beyond Deregulation: Designing the Information Infrastructure." *The Information Society* 1, no. 3 (1982): 167-90.

Brooks, Jeffrey. "Public and Private Values in the Soviet Press, 1921-1928." *Slavic Review* 48 (Spring 1989): 16-35.

Bunkers, Suzanne, L. "Diaries: Public and Private Records of Women's Lives." *Legacy* 7, no. 2 (Fall 1990): 17-26.

Campbell, Brian. "Forming and Implementing a National Information Policy." *Canadian Library Journal* 49, no. 1 (February 1992): 13-16.

Capron, Alexander Morgan. "Privacy: Dead and Gone?" *Hastings Center Report* 22 (January/February 1992): 43-45.

Castiglione, Robert I. "Paul Weiss' Privacy: The Rediscovery of Human Being." *Philosophy Today* 28 (Spring 1984): 20-35.

Chaum, David. "Achieving Electronic Privacy." *Scientific American* 267, no. 2 (August 1992): 96-101.

Chekola, Mark. "Outing, Truth-Telling and the Shame of the Closet (Gay Ethics)." *Journal of Homosexuality* 27 (1994): 67-90.

Chmielewski, Piotr. "The Public and the Private in Primitive Societies." *International Political Science Review* 12 (October 1992): 267.

Cladis, Mark S. "Rousseau and Durkheim: The Relation between the Public and the Private." *Journal of Religious Ethics* 21 (Spring 1993): 1-25.

Correa, Charles. "The Public, the Private, and the Sacred." *Daedalus* 118 (Fall 1989): 93-113.

Crawford, Rick. "Techno Prisoners." *Adbusters Quarterly* (Summer 1994): 16-23.

Cummings, Nancy Boucot. "Patient Confidentiality." *Second Opinion* 19 (1993): 112-116.

Davies, Carole Boyce. "Private Selves and Public Spaces: Autobiography and the African Woman Writer." *College Language Association Journal* 34 (March 1991): 267-89.

Davis, Tracy C. "Private Women and the Public Realm." *Theatre Survey* 35 (May 1994): 65-71.

Dean, D M. "Public and Private? London, Leather and Legislation in Elizabethan England." *Historical Journal* 31 (September 1988): 525-48.

Derlaga, V, and J Grzelak. "Appropriateness of Self-Disclosure." In *Self-Disclosure: Origins, Patterns and Implications of Openness in Interpersonal Relationships*, ed. G Chelune, 151-76. San Francisco: Jossey-Bass Publishers, 1979.

Dollar, Truman. "The Price of Privacy: Who Will Pay It?" *Fundamentalist Journal* 6 (April 1987): 66.

Drucker, S J, and G Gumpert. "Public Space and Communication: The Zoning of Public Interaction." *Communication Theory* 1, no. 4 (1991): 294-310.

Drucker, S J. "Segregated City-Life: Cultural Interactions in Public Space." *Media Development* 3 (1990): 20-22.

Elliot, S. "Better Than Gold: Libraries and the New Information Economy." *Canadian Library Journal* (October 1992): 361-64.

Erickson, Joyce Quiring. "Public and Private in Jane Austen's Novels." *Midwest Quarterly* 25 (Winter 1984): 201-19.

Falls-Corbitt, Margaret, and Michael F McLain. "God and Privacy." *Faith and Philosophy* 9 (July 1992): 369-86.

Feldman, Mark. "The Right to Communicate Under International Law." In *Toward a Law of Global Communications Networks*, ed. Anne W. Branscomb, 343-49. New York: Longman, 1986.

Ferrall, Victor E Jr. "The Impact of Television Deregulation on Private and Public Interests." *Journal of Communication* 39 (Winter 1989): 8-38.

Fewsmith, Joseph. "From Guild to Interest Group: The Transformation of Public and Private in Late Qing China." *Comparative Studies in Society and History* 25 (October 1983): 617-40.

Firth, Raymond. "Sex and Slander in Tikopia Song: Public Antagonism and Private Intrigue." *Oral Tradition* 5 (May/October 1990): 2-3, 219-40.

Ford, Caroline C. "Private Lives and Public Order in Restoration France: The Seduction of Emily Loveday." *American Historical Review* 99 (February 1994): 21-43.

Fortner, Robert S. "Privacy is Not Enough: Personhood and High Technology." *Conrad Grebel Review* 7 (Spring 1989): 159-77.

Fournier, Frances. "Freedom of Information and Privacy: The Story of Vancouver's By-Law." *Archivaria*, no. 32 (Summer 1991): 199-204.

Franco, Jean. "Going Public: Reinhabiting the Private." In *On Edge: The Crisis of Contemporary Latin American Culture*, eds. George Yudice, Jean Franco, and Juan Flores, 65-83. Minneapolis: University of Minnesota Press, 1992.

Frieden, Karl. "Public Needs and Private Wants." *Dissent* 34 (Summer 1987): 317.

Fromm, Harold. "Public Worlds/Private Muses: Criticism, Professionalism, and the Audience for the Arts." *Massachusetts Review* 28 (Spring 1987): 13-29.

Gandy, Oscar H Jr. "Caller Identification: The Two-Edged Sword." In *Pacific Telecommunications Weaving the Technological and Social Fabric*. Proceedings of the 1990 Pacific Telecommunications Conference, 207-13. Honolulu: Pacific Telecommunications Council, 1994.

_____. "The Surveillance Society: Information Technology and Bureaucratic Social Control." *Journal of Communication* 39, no. 3 (1989): 61-76.

Gardner, C B. "Access Information: Public Lies and Private Peril." *Social Problems* 35, no. 4 (1998): 384-97.

Gay, Peter. "The Discreet Pleasures of the Bourgeoisie." *American Scholar* 53 (Winter 1983/1984): 91-99.

Geary, Christraud M. "Missionary Photography: Private and Public Readings." *African Arts* 24 (October 1991): 48-59.

Gibbons, Luke. "Private Voices, Public Spheres." *Artforum* 31 (May 1993): 97-98.

Gibson, Donald B. "Reconciling Public and Private in Frederick Douglass' Narrative." *American Literature* 57 (December 1985): 549-69.

Gillespie, M, and K Robins. "Geographical Inequalities: The Spatial Bias of the New Communications Technologies." *Journal of Communication* 39, no. 3 (Summer 1989): 7.

Given-Wilson C. "Wealth and Credit, Public and Private: The Earls of Arundel 1306-1397." *English Historical Review* 106 (January 1991): 1-26.

Glazer, Rashi. "Marketing in an Information-Intensive Environment: Strategic Implications of Knowledge As an Asset." *Journal of Marketing* 55, no. 4 (October 1991): 1.

Goldman, Robert P. "Karma, Guilt, and Buried Memories: Public Fantasy and Private Reality in Traditional India." *Journal of the American Oriental Society* 105 (July/September 1985): 413-25.

Gombay, Andre. "Some Paradoxes of Counterprivacy." *Philosophy* 63 (April 1988): 191-210.

Goodman, David J. "The Information Society and Public Policy." In *Information Technology: The Public Issues,* eds. Raymond Plant, Frank Gregory, and Alan Brier, 62-78. Manchester: Manchester University Press, 1988.

Goodman, Dena. "The Hume-Rousseau Affair: From Private Querelle to Public Process." *Eighteenth Century Studies* 25 (Winter 1991/1992): 171-201.

_____. "Public Sphere and Private Life: Toward a Synthesis of Current Historiographical Approaches to the Old Regime." *History and Theory* 31 (1992): 1-20.

Gopen, George D. "Private Grief into Public Action: The Rhetoric of John of Gaunt in Richard II." *Studies in Philology* 84 (Summer 1987): 338-62.

Grace, John. "The Ethics of Information Management." *Canadian Public Administration* 34, no. 1 (Spring 1991): 95-100.

Graff, Harvey J. "Families and Politics: Beyond Public/Private Dichotomies and Empty Theories." *Journal of Family History* 13 (1988): 433-39.

Gumpert, G. "Public Space and Electronic Space: Two Worlds That Interact." *Media Development* 3 (1990): 3-5.

Greenfield, Jeff. "Public Interest and Private Greed." *Columbia Journalism Review* 29 (May/June 1990): 47-48.

Habermas, Jurgen. "The Public Sphere." In *Rethinking Popular Culture: Contemporary Perspectives in Cultural Studies*, eds. C Mukjeri and M Schudson, 398-404. Berkeley: University of California Press, 1991.

Hammack, David C. "Private Organizations, Public Purposes: Nonprofits and Their Archives." *Journal of American History* 76 (June 1989): 181-91.

Harsch, Donna. "Public Continuity and Private Change? Women's Consciousness and Activity in Frankfurt 1945-1955." *Journal of Social History* 27 (Fall 1993): 29-58.

Herdt, Jennifer A. "Cruelty, Liberalism, and the Quarantine of Irony: Rorty and the Disjunction between Public and Private." *Soundings* 75, no. 1 (Spring 1992): 79-95

Herzstein, Robert. "Applying Traditional Trade Principles to the International Flow of Information." In *Toward a Law of Global Communication Networks*, ed. Anne W Branscomb, 313-30. New York: Longman, 1986.

Hill, John. "Privacy and the Teaching of the (Catholic) Church." *Colloquium* 17 (1984): 11-17.

Honig, Emily. "Courtship, Love, and Marriage in Contemporary China: Private Issues, Public Discourse: The Life and Times of Yu Luojin." *Pacific Affairs* 57 (Summer 1984): 252-65.

Hubbertz, Andrew. "Crown Copyright and the Privatization of Government Information in Canada, with Comparisons to the United States Experience." *Government Publications Review* 17, no. 2 (March/April 1990): 159-65.

James, Edward W. "Rights, Privacy, and Tainted Ideals." In *Foundations of Ethics*, ed. Leroy S Rouner, 115-32. Notre Dame: University of Notre Dame Press, 1983.

Jones, D G. "Private Space and Public Space." In *On F R Scott: Essays on His Contributions to Law, Literature, and Politics*, eds. Sandra Djwa and R Macdonald, 44-54. Kingston: McGill-Queen's University Press, 1983.

Kahin, Brian. "Information Policy and the Internet: Toward a Public Information Infrastructure in the United States." *Government Publications Review* 18, no. 5 (September/October 1991): 451-72.

Katz, J E. "Public Concern Over Privacy: The Phone is the Focus." *Telecommunications Policy* 15, no. 2 (April 1991): 166-68.

_____. "Caller-ID, Privacy and Social Processes." *Telecommunications Policy* 14, no. 4 (October 1990): 373-411.

Keegan, Joseph G. "Privacy and Spritiual Growth." In *Privacy: A Vanishing Value?*, ed. W Bier, 67-87. Bronx, NY: Fordham Equipment & Publishing, 1980.

Kens, Paul. "Liberty and the Public Ingredient of Private Property." *Review of Politics* 55 (Winter 1993): 85.

Kupher, Joseph. "Privacy, Autonomy, and Self-Concept." *American Philosophical Quarterly* 24 (January 1987): 81-89.

Lacey, Nicola. "Theory into Practice? Pornography and the Public/Private Dichotomy." *Journal of Law and Society* 20 (Spring 1993): 93.

Larkin, S Dudley, and Sally A Rood. "Technology Commercialization: Combining Public and Private." *Policy Studies Journal* 18 (Fall 1989): 188.

Lebacqz, Karen. "Genetic Privacy: No Deal for the Poor." *Dialog* 33 (Winter 1994): 39-48.

Lecker, Robert. "Privacy, Publicity, and the Discourse of Canadian Criticism." *Essays on Canadian Writing* 51, no. 2 (Winter 1993/Spring 1994): 32-82.

Leicester, H Marshall Jr. "Of a Fire in the Dark: Public and Private Feminism in the Wife of Bath's Tale." *Women's Studies* 11 (1984): 157-78.

Louge, Larry M. "Union Veterans and Their Government: The Effects of Public Policies on Private Lives." *The Journal of Interdisciplinary History* 22 (Winter 1992): 411-34.

Lucey, Anne. "A 100-Year Search for Privacy." *The Quill* 78 (November/December 1990): 4.

Luidens, Donald A, and Roger J Nemeth. "'Public' and 'Private' Protestantism Reconsidered: Introducing the 'Loyalists'." *Journal for the Scientific Study of Religion* 26 (December 1987): 450-64.

Lyon, David. "Bentham's Panopticon: From Moral Architecture to Electronic Surveillance." *Queen's Quarterly* 98 (Fall 1991): 596-616.

Mackey-Kallis, Susan, and Dan F Hahn. "Questions of Public Will and Private Action: The Power of the Negative in the Reagans' Just Say No Campaign." *Communication Quarterly* 39 (Winter 1991): 1-17.

Madsen, Wayne. "Protecting Privacy in a Digital World: Developments in the Asia-Pacific Region." *Media Information Australia* 67 (February 1993): 40-50.

Marcus, Jane. "Invincible Mediocrity: The Private Selves of Public Women." In *The Private Self: Theory and Practice of Women's Autobiographical Writings*, ed. Shari Benstock, 114-46. Chapel Hill: University of North Carolina Press.

Marowitz, Charles. "Private Communiques, Public Prints." *Review of Contemporary Fiction* 10 (Fall 1990): 170-74.

Martin, Robert A and Fiora A Bassanese. "Private Lives and Public Lies: Texts by Courtesans of the Italian Renaissance." *Texas Studies in Literature and Language* 30 (Fall 1988): 295-319.

Martin, Susan K. "Information Technology and Libraries: Toward the Year 2000." *College and Research Libraries* 50, no. 4 (July 1989): 397-405.

Mauss, Marcel. "Essai sur les variations saisonières des sociétés eskimos: Études de morphologie sociale." *Annales Sociologiques* 9 (1904-05): 39-132.

Mayo, David J. "Privacy and the Ethics of Outing." *Journal of Homosexuality* 27 (1994): 47-65.

McBride, Theresa. "Public Authority and Private Lives: Divorce after the French Revolution." *French Historical Studies* 17 (Spring 1992): 747-68.

McBrien, Richard P. "The Believer's Right to Privacy." In *Privacy: A Vanishing Value?*, ed. W Bier, 124-31. Bronx, NY: Fordham Equipment & Publishing, 1980.

McCarthy, Thomas A. "Private Irony and Public Decency: Richard Rorty's New Pragmatism." *Critical Inquiry* 16 (Winter 1990): 355-70.

Meli, D Bertoloni. "Public Claims, Private Worries: Newton's Principia and Leibniz's Theory of Planetary Motion (and Kepler's Laws)." *Studies in History and Philosophy of Science* 22 (September 1991): 415-49.

Mensch, Betty, and Alan Freeman. "Liberalism's Public/Private Split." *Tikkun* 3 (March/April 1988): 24-30.

Menzies, Heather. "Hyping the Highway: Is the Information Highway the Road to a Common Future or Just Another Trip to the Mall?" *Canadian Forum* (June 1994): 18-26.

_____. "Information Systems and Monopolies of Knowledge." *Canadian Journal of Information Science* 16, no. 1 (April 1991): 2-11.

Morton, Bruce, and Steven D Zink. "Contemporary Canadian Federal Information Policy." *Canadian Public Administration* 34, no. 2 (Summer 1991): 312-338.

Mosco, Vincent. "Information Policy: The Superhighway Meets the Great White Way." *Media* 1, no. 3 (October 1994): 14-15+.

Mukherjee, Roopali, and Rohan Samarajiva. "The Customer Web: Transaction Generated Information and Telecommunication." *Media Information Australia* 67 (February 1993): 51-61.

Muller, Roswitha. "From Public to Private: Television in the Federal Republic of Germany." *New German Critique* 50 (Spring/Summer): 41-55.

Neier, Aryeh. "Surveillance by the FBI." *Index on Censorship* 10 (April 1981): 42-47.

Nelson, Janet L. "The Problematic in the Private." *Social History* 15 (October 1990): 355-64.

_____. "Public Histories and Private History in the Work of Nithard." *Speculum* 60 (April 1985): 251-93.

Nilsen, Kirsti. "Government Information Policy in Canada." *Government Information Quarterly* 10, no. 2 (1994): 203-20.

Noonkester, Myron C. "Gibbon and the Clergy: Private Virtues, Public Vices." *Harvard Theological Review* 83 (October 1990): 399-414.

Novek, Eleanor, Sinha Nikhil, and Gandy Oscar. "The Value of Your Name." *Media, Culture and Society* 12 (1990): 525.

Okerson, Ann. "With Feathers: Effects of Copyright and Ownership on Scholarly Publishing." *College and Research Libraries* 52 (September 1991): 425-38.

Paton, Richard. "The Need to Reform Information Policies." *Canadian Speeches* 8 (April 1994): 20-24.

Pelletiere, Jean C. "Public Versus Private: A Wavering Line." *Bureaucrat* 18 (Summer 1989): 57.

Peterson, Trudy. "Rural Life and the Privacy of Political Assocation." *Agricultural History* 64 (Summer 1990): 1-8.

Petronio, S. "Communication Boundary Management: A Theoretical Model of Managing Disclosure of Private Information between Marital Couples." *Communication Theory* 1, no. 4 (November 1991): 311-335.

Petronio, S, and J Chayer. "Communicating Privacy Norms in a Corporation: A Case Study." *Proceedings of the International Communication Association.* New Orleans, 1988.

Petronio, S, C Olson, and N Dollar. "Privacy Issues in Relational Embarrassment: Impact on Relational Quality and Communication Sastifaction." *Communication Research Reports* 6 (1989): 21.

Petronio, S, and J Martin. "Ramifications of Revealing Private Information: A Gender Gap." *Journal of Clinical Psychology* 42, no. 2 (March 1986): 499-506.

Petronio, S, J Martin, and R Littlefield. "Prerequisite Conditions for Self-Disclosure: A Gender Issue." *Communication Monographs* 51 (1984): 268-273.

Phillips, Bruce. "Must Protect Privacy from Electronic Vultures." *Canadian Speeches* 8 (April 1994): 30-33.

Press, John. "Carry On, Culture: Private Thoughts and Public Funding." *Encounter* 66 (March 1986): 51-55.

Revel, Jean Francois. "Paris Notebook: The Public Sector and the Private." *Encounter* 69 (November 1987): 40-42.

Riddle, Dorothy. "The Role of Data Services for Development." In *Information Economy and Development*, ed. Dorothy I. Riddle, 67-85. Bonn: Friedrich-Ebert-Stiftung, 1988.

Ringhand, Lori. "Backlash: Facing Public Privacy Fears: Some States Try to Legislate Away Our FOI Rights." *The Quill* 80 (October 1992): 10-12.

Roberts, M J D. "Public and Private in Early Nineteenth-Century London: The Vagrant Act of 1822 and its Enforcement." *Social History* 13 (October 1988): 273-94.

Robins, K, and F Webster. "Cybernetic Capitalism: Information, Technology, Everyday Life." In *The Political Economy of Information*, eds. V Mosco and J Wasko, 44-75. Madison: University of Wisconsin Press, 1988.

Roche, Edward M, and David J Dell. "Data Border Crossings: Who Has the Right to Know What?" *Worldview* 26 (July 1983): 7-10.

Rose, Nikolas. "Beyond the Public/Private Division: Law, Power and the Family." *Journal of Law and Society* 14 (Spring 1987): 61-76.

Ruggles, Myles. "Mixed Signals: Personal Data Control in the Intelligent Network." *Media Information Australia* 67 (February 1993): 28-39.

Sales, Arnaud. "The Private, the Public, and Civil Society: Social Realms and Power Structures." *International Political Science Review* 12 (October 1991): 295-312.

Salska, Agnieszka. "Puritan Poetry: Its Public and Private Strain." *Early American Literature* 19 (Fall 1984): 107-21.

Samar, Vincent. "The Right to Privacy: Gays, Lesbians, and the Constitution." *Ethics* 103 (April 1993): 615.

Samarajiva, Rohan. "Privacy in Electronic Public Space: Emerging Issues." *Canadian Journal of Communication* 19 (Winter 1994): 87-99.

_____. "Private and Competitive Implications of New Uses of Customer Information." In *The National Ccommunications Forum 91 Proceedings*, 84-87. Chicago: National Engineering Consortium, 1991.

Sappington David E M, and Joseph E Stiglitz. "Privatization, Information and Incentives." *Journal of Policy Analysis and Management* 6 (Summer 1987): 567-582.

Scheiber, Andrew J. "Public Force, Private Sentiment: Hawthorne and the Gender of Politics." *American Transcendental Quarterly* 2 (December 1988): 285-99.

Schiller, Dan, and RosaLinda Fregoso. "A Private View of the Digital World." *Telecommunications Policy* 15, no. 3 (June 1991): 195-208.

Schoeman, Ferdinand. "Privacy: Philosophical Dimensions." *American Philosophical Quarterly* 21 (July 1984): 199-213.

Schwartz, Judith. "The Archivist's Balancing Act: Helping Researchers While Protecting Individual Privacy." *Journal of American History* 79 (June 1992): 179-89.

Scott, Marianne. "Equitable Access to Information: Quality of Life." *Feliciter* 40, no. 3 (March 1994): 32-34.

Sharpe, R A. "The Private Reader and the Listening Public." In *Criticism and Critical Theory*, ed. Jeremy Hawthorn, 15-26. London: Arnold, 1984.

Shils, E. "Privacy and Power." In *Center and Periphery: Essays in Macrosociology*, ed. E Shils, 317-44. Chicago: University of Chicago Press, 1975.

Sinfield, Alan. "Private Lives/Public Theater: Noel Coward and the Politics of Homosexual Representation." *Representations* 36 (Fall 1991): 43-63.

Spolar, Christine. "Privacy for Public Figures?" *Washington Journalism Review* 14 (June 1992): 20-22.

Stafh, John Daniel. "Mark Twain and Female Power: Public and Private." *Studies in American Fiction* 16 (Spring 1988): 51-63.

Stewart, Larry. "Public Lectures and Private Patronage in Newtonian England." *Isis* 77 (March 1986): 47-58.

Stewart, Rowena. "Bringing Private Black Histories to the Public." In *Museums and Universities: New Paths for Continuing Education*, ed. Janet W. Solinger, 351. New York: Macmillan, for National University Continuing Education Association, 1990.

Sussman, Henry. "A Note on the Public and the Private in Literature of 'Acting Out.'" *Modern Language Notes* 104 (April 1989): 597-611.

Taliaferro, Charles. "Does God Violate Your Right to Privacy?" *Theology* 92 (May 1989): 190-96.

Tapscott, Don. "People in the Second Era of the Information Age." *Canadian Speeches* 8 (April 1994): 6-11+.

Turkel, Gerald. "The Public/Private Distinction: Approaches to the Critique of Legal Ideology." *Law and Society Review* 22 (1988): 801.

Van de Wetering, Maxine. "The Popular Concept of 'Home' in Nineteenth-Century America." *Journal of American Studies* 18 (April 1984): 5-28.

Van Leeuwen, Mary Stewart. "Should Private Morality Go Public? A Christian Feminist Evaluation." *Christian Scholar's Review* 22 (1992): 36-56.

Vitone, Philip. "Reflections on Surveillance." *Canadian Journal of Communication* 19 (Winter 1994): 101-10.

Walker, Donna. "An Imminent and Serious Threat to Individual Right to Privacy, Access to Information through Data Banks: Likelihood of Mass Surveillance." *Engage/Social Action* 12 (Fall 1984): 22-25.

Warren, Samuel, and Louis Brandeis. "The Right to Privacy." *Harvard Law Review* 4 (1890): 193-220.

Weber, Bryce. "The Public, the Private and the Ideological Character of the Division of Powers in Sections 91 and 92 of the Constitution Act of 1867 (with discussion)." *Journal of Canadian Studies* 26 (Summer 1991): 88-107.

Webster, F, and K Robins. "Plan and Control: Toward a Cultural History of the Information Society." *Theory and Society* 18 (1989): 323-51.

Weisman, John. "Public Interest and Private Greed." *Columbia Journalism Review* 29 (May/June 1990): 46-47.

Williams, Noel. "Security, Privacy and Control." In *Technology in Human Communication*, eds. Noel Williams and Peter Hartley. London: Pinter, 1990.

Willis, Sharon. "Seductive Spaces: Private Fascinations and Public Fantasies in Popular Cinema." In *Seduction & Theory: Readings of Gender, Representation, and Rhetoric,* ed. Dianne Hunter, 47-70. Urbana: University of Illinois Press, 1989.

Willis, Susan. "Disney World: Public Use/Private State." *South Atlantic Quarterly* 92 (Winter 1993): 119-37.

Wisnia, Saul E. "Private Grief, Public Exposure." *The Quill* 77 (July/August 1989): 28-30.

Wolfe, Alan. "The Politics of Privacy, Right and Left." *Harper's Magazine* 286 (May 1993): 18, 20+.

Wood, Donald. "Effective Tools or Privacy Invaders?" *Christian Social Action* 5 (January 1992): 14-16.

Ziegler, Robert E. "Freedom and Confinement: The Policeman's Experience of Public and Private in Joseph Wambaugh." *Clues* 3 (Spring/Summer 1982): 1, 9-16.

GOVERNMENT DOCUMENTS

Australia. House of Representatives Standing Committee for Long Term Strategies. *Australia As an Information Society: Grasping New Paradigms*. Canberra: AGPS, 1991.

Australian Telecommunications Authority. *Privacy Inquiry: Draft Report*. Melbourne: 1992.

Canada. Communications Canada. *Privacy Protection in Telecommunications: Discussion Paper and Proposed Principles*. 1992.

_____ . *Telecommunications Privacy Principles*. 1992.

Canada. Department of Communications. *New Media . . . New Choices: The Information Society*. 1992.

_____ . *Privacy Revealed: The Canadian Privacy Survey*. 1993.

Canada. Department of Industry (Industry Canada). *Canada's Information Highway: Building Canada's Information and Communications Infrastructure*. 1994.

_____ . *Competition Act and the Canadian Telecommunications Industry*. 1994.

_____ . *G7 Ministerial Conference on the Information Society*. 1995.

_____ . *Information Highway: Avenues for Expanding Canada's Economy, Employment and Productivity in the New World Marketplace*. 1994.

_____ . *Study on New Media and Copyright*. Final Report. 1994.

Canada. Department of Industry, Science and Technology. *Annual Reports of the Access to Information and Privacy Acts*.

Canadian Ethnocultural Council. *Not So Visible: A Survey of Employment Equity for Visible Minorities in the Private and Public Sectors*. 1989.

Canada. Information Commissioner. *Access to Information Act: A Critical Review*. 1994.

_____ . *Access to Information Act: 10 Years On*. 1994.

_____ . *Information Technology and Open Government*. 1994.

Canada. Information Highway Advisory Council. *Access, Affordability and Universal Service on the Canadian Information Highway*. 1995.

_____ . *Canada's Information Highway: Building Canada's Information and Communications Infrastructure*. 1994.

Canada. Parliament. Library. Research Branch. *Information Superhighway*. 1994.

Canada. Privacy Commissioner. *Annual Report of the Privacy Commissioner*.

Canada. Treasury Board. *Blueprint for Renewing Government Services Using Information Technology*. 1994.

Canadian Workplace Automation Research Centre. *Impact of Technological Change on Jobs and Education*. 1987.

_____ . *Towards an Information Society*. 1992.

Council of Europe. *Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data*. Brussels: 1981.

Institute for Research on Public Policy. *Governing in an Information Society*. 1992.

Ontario. Office of the Information and Privacy Commissioner. *Annual Report of Information and Privacy Commissioner.*

_____ . *Key to the 90s: Privacy and Information Access*. 1988.

_____ . *Privacy Alert: A Consumer's Guide to Privacy in the Marketplace.* 1994.

Science Council of Canada. *Uneasy Eighties: The Transistion to an Information Society*. 1985.

United States. Panel on Confidentiality and Data Access. *Private Lives and Public Policies: Confidentiality and Accessibility of Government Statistics.* Washington, DC: National Academy Press, 1993.

United States. Privacy Protection Study Committee. *Personal Privacy in an Information Society.* Washington, DC: US Government Printing Office, 1977.

INTERNET RESOURCES

Computer Privacy Digest. Send requests for subscription to comp-privacy-request@uwm.edu.

Electronic Frontier Foundation. http://www.eff.org.

Electronic Privacy Information Center. http://www.epic.org.

JOURNALS

International Privacy Bulletin

Full Disclosure

Low Profile

Privacy and American Business

Privacy and Security 2001

Privacy Files

Privacy Journal

Privacy Law and Policy Reporter

Privacy Laws and Business

Privacy Times

Security Insider Report

2600 Magazine

Transnational Data and Communications Report

UNIVERSITY OF
WINDSOR