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Gender and the Evolution of European Social Policies*

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I. Introduction

As matters stand, women only enter the comparative academic analysis of social policies when they become significantly visible as paid workers (Leibfried 1991; Esping-Andersen 1990). This is a product of the conceptualisation of welfare regimes as something more than the study of policies of social amelioration which characterised the older literature on the development of welfare states. The relationship between state and economy, and in particular between work and welfare, has become central to the analysis of welfare regimes, where work is defined as paid work and welfare as policies that permit, encourage or discourage the decommmodification of labour. Given that one of the major post-war social trends in the vast majority of welfare states has been the increase in female labour participation rates, part at least of this analysis has had to be gendered.

In some measure this is an improvement on the older comparative literature, which focused on measures of public expenditure or redistribution and found it possible to ignore gender altogether. Large scale analyses of redistribution have never ventured beyond the household door, despite the growing literature on the division of resources within the household which draws attention to profound gender and generational inequalities (Pahl 1990; Brannen and Wilson 1987)¹. However, to give priority to gender in analyses of redistribution entails conflict with those who would prioritise social class (see the discussion in Lewis 1983), which has historically been assigned to households and has taken precedence².

Women may also enter the horizons of policymakers as mothers, for whom special provision in the form of pay, leave and medical care may be made, but this form of welfare provision enters the conceptual framework of comparative policy analysts as a separate block, as an add-on. Indeed, for the most part, analysis and policymaking struggles to be gender-neutral, either because other variables, like social class are being prioritised, or because there is a deliberate strategy to treat men and women 'the same', as for example in 1980s Anglo-American divorce law or in US workfare schemes. Arguably, the gender variable has become more significant in post-war societies because of both women's political mobilisation and structural change; the three dominant social trends have been the increase in divorce, unmarried motherhood and married women's paid employment. The increase in the numbers of lone mother families, as the product of the first two of these trends, has made female welfare dependency an issue in most European and OECD countries, even though it is mistaken to regard the 'feminisation of poverty' as a new phenomenon³. In this context, gender neutral policies can paradoxically become a way of tackling a poverty problem that is disproportionately female and child centred.

¹ More properly this is a re-discovery of the importance of the inequalities in household resources. Early twentieth century social investigators were aware that women often did not know what their husbands earned and that crucial items like food and clothing were unequally shared between family members.

² Brian Barry (1990) has been one of the few to insist on the importance of policies designed to achieve horizontal equity as well as the more usually measured vertical equity.

³ The American literature, eg Pearce (1990) tended to treat the feminisation of poverty as new; in fact women have always been disproportionately poor (see Lewis and Piachaud, 1986).

Women are fitted into the same (paid) work/welfare framework that has been designed primarily with male breadwinners in mind.

This, as much as the academic analysis of policy regimes, which also captures women only as paid workers, serves to obscure what we would argue to be one of the most central issues in the structuring of welfare regimes: the problem of valuing the (unpaid) work women do as providers of welfare, mainly within the family and in securing them social entitlements. The crucial relationship is not just between paid work and welfare, but between paid work and unpaid work and welfare. This relationship is gendered because while it is possible to argue that the divisions in paid work have substantially diminished to the extent that greater numbers of women have entered the labour market (although not with regard to payment, status and working hours) all the evidence suggests that the gendered division of unpaid work remains substantially the same⁴. Thus, concepts such as 'decommodification' or 'dependency' have a gendered meaning that is rarely acknowledged. While Esping-Andersen (1990) writes of decommodification as a necessary prerequisite for workers' political mobilization, the worker he has in mind is male and his mobilization may depend as much on unpaid female household labour. Decommodification for women is likely to result in their carrying out unpaid caring work; in other words, 'welfare dependency' on the part of adult women is likely to result in the greater independence of another person, young or old. The unequal division of unpaid work thus complicates the status of dependent/independent, commodified/decommodified (Langan and Ostner 1991).

This in turn complicates the basis of women's claims to social entitlements. Historically and in current feminist analysis there has been a tension between claiming on the basis of 'difference', that is on the basis of the caring work women do primarily as mothers, but increasingly for the elderly, and claiming on the basis of equality, in the sense of 'sameness' with men. In the case of the former, no government has ever succeeded in attaching a substantial value to caring work. In the case of the latter, any effort to treat men and women the same, for example in the matter of divorce settlements, ignores prior substantive inequalities in the division of work and resources.

The gendering of welfare regimes thus raises issues about the basis of social rights and about the expression of power relationships. The work of making gender a fundamental variable in the analysis of welfare regimes has barely begun (Langan and Ostner 1991; Shaver 1990). Our objectives here are therefore limited. In what follows, first, we want to draw attention to underlying concepts of the public and the private as well as of equality as an analytic concept and a political demand in national and in European policies (paragraph II). Second, we will focus on the fact that the informal provision of welfare by women has always been a significant part of the mixed economy of welfare and was recognised to be so by late nineteenth century social activists (who sought to defend it by bolstering the bourgeois family form), even though it has not been a major part of the post-war analysis of social policy until the 1980s, when both New Right thinkers and feminist historians drew attention to the role of the family and the voluntary sector in the provision of welfare (paragraph III). Third, *we want therefore to suggest an alternative categorization of welfare regimes based on the gender division of work and using*

4 For a useful review of the English speaking literature, see Morris (1990).

the strength of the male breadwinner/family wage model as a proxy measure (paragraph IV). Fourth, we investigate how the boundary between the public sphere of paid work and the private domestic of daily caring is redrawn in the evolution of European social policies which have so far been mainly employment centered policies (paragraph V). In every EC country the idea and norm of a "male breadwinner" and of a "secondary" female wage earner was built into the welfare system. What can be hoped from EC women's policies? Finally, we return to the problems inherent in politicizing women's needs, to the pessimists versus the optimists on the role of the state as a possible ally and to what may realistically be expected of the EC polity in this regard given its political performance thus far (paragraph VI).

Assumptions regarding the existence of the male breadwinner, female and child dependant family form were built into welfare provisions in varying degrees in different countries (Schunter-Kleemann 1990a). While the vast majority of countries recognised the male breadwinner role, there were significant differences as to the extent to which women were confined to homemaking and motherhood, or - as married women and mothers - also recognised as workers. This produced, we would argue, differing results in terms of women's entitlement to benefits, the level of the social wage, public expenditure for social services, and women's labour force participation. We distinguish "strong", "moderate", and "weak" male breadwinner states.

We are aware that our attempt to gender welfare regimes is very preliminary and above all incomplete. It does by no means aim at replacing existing typologies. Yet, we hope to draw attention to the importance of securing entitlements to time as well as to money (this follows from the unequal division of unpaid work). Our categorization does not touch the important areas of explicit or implicit family policies which may encourage or discourage women's employment; nor those of sexual autonomy and of securing negative as well as positive rights for women. For while most critics of modern welfare states are agreed in their defence of the negative right not to be interfered with (Nozick 1974; Murray 1984), women have a long way to go in all countries before this is the case.

II. The Public and the Private - Procedural versus Material Equality

If gender is central, what are the ways of thinking about it? We suggest that it is the boundary between public and private - where it is drawn for men and for women, who draws it, and why it is drawn where it is when it is in different societies - that is the central overarching issue. In the current comparative literature on welfare regimes, the discussion tends to be firmly focussed on the public sphere be it state or market. Women only enter the analysis when they enter the public sphere (as paid workers, or more rarely, as policymakers). Theoretical concepts as well as empirical research ignore the other side of the coin: that the worker's productivity and mobility, his or her independence, is inevitably built on the unpaid work of others, many of them family members, on their dependence. We argue first, that integrating the private sphere into the analysis is crucial to the work of gendering the study of welfare, and second that it is the relationship between public and private and the gendering of the spheres that is important.

Carole Pateman (1989: 119) hints at some confusion in liberal theory as to whether civil society is public or private. Liberals insist that the family is paradigmatically private without pursuing the question why the majority of them also see civil society as private. If one draws upon Pateman's critique, modern societies can be conceptualized as consisting of the "private private" of domestic or personal and body-linked needs issues, the private of the market economy (private but public), the public (public) of the polity (Arendt's and Habermas' ideal of free public speech and discourse), and the public private of needs based welfare provisions (needs that were allowed to pass the boundary between "the private" and "the public"). This analytic categorization makes easily evident that none of the spheres is separate; on the contrary, the spheres are *interrelated* in multiple ways.

Pateman criticizes the modern liberalist ideology of the separation and opposition of the public and the private sphere. Moreover, she argues, in liberal theory this dichotomy is thought to apply to all individuals in the same way. She shows that the other side of the coin of individualism and egalitarianism is a modern version of a patriarchal subordination of women which today relates and limits women to the private, domestic, personal in an indirect way. This seems to be on the face of it paradoxical. Liberals argued against patriarchal power and its exercise over free and adult individuals without consent. This resulted in the creation of the timeless, unchanging, ever "adult" and independent, and because of this, "bodiless" modern individual, - the modern "brotherhood society" (according to Pateman a contract abolishing the patriarchal father). But modern individualist society needed more than ever a sphere where every memory and notion of "life as process", dependence, (for example that of man on a woman to become a parent), etc. could be hidden. While liberal theory flourished, women (speaking women's talk) became excluded from both the public in terms of the formation of political will ("Öffentlichkeit") and thereby of speech (that is not immediately "same" - male adjusted - speech), and of the private public of the market. Instead, they became primarily related to the private, paradigmatically, to the family as the private private (domestic). Pateman concludes:

"... the public sphere can be seen as encompassing all social life apart from domestic life. Locke's theory also shows how the private and public spheres are grounded in opposing principles of association which are exemplified in the conflicting status of women and men. ... The family is based on natural ties of sentiment and blood and on the sexually ascribed status of wife and husband (mother and father). Participation in the public sphere is governed by universal, impersonal and conventional criteria of achievement, interests, rights, equality and property - liberal criteria, applicable only to men" (ibid.: 121).

An important consequence, then, is that the public of civil society is discussed and politized "in abstraction from, or as separate from the private sphere" (ibid.)⁵.

5 The separation and opposition of the public and the private go hand in hand with that of body and mind or, in a new version, body and self. In his recent book on life politics and the body Giddens (1991: 217) dichotomizes "life-political" questions concerning self-identity versus questions focusing more specifically on the body (the body as the private private, and the "fixed") and, thus, the self versus his or her body. According to his argument, the latter (the body) is allowed to enter the public only when choices are available or have to be made (whether to have an abortion, or artificial insemination or kidney or not). Bodily needs are only recognized - in terms of a legitimate life politics - as part of the "reflexive project of the self". Like his liberal ancestors, Giddens fails to

European countries differ as to the extent to which their notion of citizenship takes into account that citizens "have" embodied (not only "own" bodies) (needs versus market approach). Thus, some countries have universal public health services, and/or an elaborated universal maternity legislation, provisions and/or services for parents, or for handicapped, chronically sick, and for elderly people. However, the stricter the dichotomy between the individual (citizen) and the body, the stricter is that between the public and the private, domestic and personal, and direct or indirect forms to safeguard the boundary (for example via "same treatment" in the public sphere). The poor and, moreover, private contract (firm) based health and maternity provisions in the USA follow from that dichotomous thinking. As we will show later, EC policies have so far owed a lot to liberalist thinking.

In summary, Pateman, as many other feminists, show that the private (domestic and personal) is neither separate from the public, nor opposed to it, nor an "add-on". They argue that the spheres are multiply interrelated, that there is a public/private split *within* the public of the market, too, and that forms of restricting women's citizenship have become more invisible and indirect. In terms of social rights the most important aspects of the public/private relationship is the gendered division of paid and unpaid work. Pateman has argued that in modern welfare states social rights attach to those who are 'independent', and that the independence is achieved through labour market integration. Because the division of paid and unpaid work is unequal between men and women, women's social rights become problematic. The comparative literature on welfare regimes has not integrated the analysis of unpaid work.

In modern societies continuous paid work, independence and economic rights are inevitably built on their opposites: unpaid work, discontinuity, dependence and immobility; paid, continuously working, mobile men face unpaid or low paid, immobile, caring women, mothers, daughters, and wives. We argue that western welfare regimes are based on this gender division of labour and that the *male breadwinner model* can be seen as a proxy measure.

Recent feminist debates revolve around the two conflicting concepts of equality: "procedural equality" and "material equality". They lead to problems in the use of equality as an analytic concept and as a political demand (Meehan and Sevenhuijsen 1991: 3). Procedural equality requires that likes are treated alike according to the assumption that women are not fundamentally different from men. Material equality, on the other hand, is rooted in the conviction that there are differences between men and women and that those have to be acknowledged for its realization. In its core, material equality refers to needs, to diversity and difference. Both concepts of equality pre-suppose a standard, a norm and an answer to the question "who should become equal to whom" (ibid.). As we will show later, the Community has become the promoter of gender equality but has not yet overcome its adherence to a very strict notion of "procedural equality".

Forbes (1991) and Carol Bacchi (1991) point out that liberalism, too, is capable of transcending a narrow interpretation of the public and equality and thereby of moving beyond to what might be thought a denial of liberalist principles based on the idea of the self sufficient, self reliant,

ask why women have always been subject of public body politics and control and are at greater risk of so being when the application of reproductive technologies will be regulated.

and independent individual (Dumont 1991: 118). Or, as Elizabeth Meehan and Selma Sevenhuijsen (1991: 5) have concluded:

"In the original sense of liberalism, the first priority is the barriers to equality, particularly direct impediments: once that is done, there is no further proper duty upon the state to provide 'special' treatment. But some modern liberals incorporate an element of material notion of equality in so far as they accept that present material circumstances arise from a history of past discrimination."

Despite the removal of barriers, women or racial minorities are still not at an equal starting point and that some affirmative or positive action is necessary, albeit as a temporary measure (*ibid.*).

Flora and Heidenheimer (1981), Steindorff (1988), and many others describe the development of modern welfare states as an incremental process from socioeconomic equality which denotes "equality of exchange conditions" to socioeconomic security. In their view, the latter led to an equalization in the disposal of resources, a "redistribution according to needs" and, thus, to what they call an "equality of results" (Flora and Heidenheimer 1981: 24). Empirically, security meant integrating the working classes into the market economy without challenging the functioning of the market. Yet, "social citizenship" has by no means automatically changed the unequal gender division of labour and the differing work and life prospects for women. On the contrary, one could argue that because of its male bias, the incremental extension of forms of social rights led to a fuller social inclusion of men by restricting women at least part-time to the private (domestic) sphere.

Liberal societies have always stressed "equality of opportunity". But at the same time they have limited this "component of a liberal ethic" (*ibid.*: 25) to public education issues and services of that kind and with regard to market opportunities. Cash benefits, the provision of services in kind, and indirect transfers provide a basic means to pursue both security and equality. Welfare issues thereby remain *within* the public of the market and the state.

III. The Historical Importance of the "Informal" Sector in the Provision of Welfare

As welfare policies so do analysis of welfare ignore or neglect the interrelatedness of the public and the private, of paid and unpaid work. An "either or" perspective prevailed for more than a century. The German "Sozialstaat" developed mainly in terms of the "Arbeiterfrage" (the workers' question), the British in terms of the "Armutfrage" (issues of poverty and pauperism) (cf. Kaufmann 1988: 15). In each case the debates had been about shifting the boundaries between market, state and self-help (the worker and his family)⁶.

The dominant tendency in the post-war analyses of welfare and welfare states has been to discuss the provision of welfare in terms of the public/private division *within* the public of state

⁶ Historically France deviates to some extent from Germany and Britain. During the 19th century French welfare policies emerged from the "family question" crosscutting the boundary between public and domestic affairs. Workers be it man or woman are perceived as family members and family breadwinners (cf. Kaufmann 1988; Schultheis 1988b).

and the market. Thus in his important early 1960s categorisation, Titmuss (1963) identified state, fiscal and occupational welfare. He passed over the informal sector of the family and voluntary organisations altogether. German literature either deals with the history of poor law, relief, what is called "Armenpolitik" (poverty policies) (cf. Sachße/Tennstedt 1988) or the Arbeiterfrage, policies for workers (Pankoke 1990) with a strong emphasis on the history of social security (Tennstedt 1976; Hockerts 1980) and monetary transfers rather than personal services. More recently, the dualism of income maintenance policies for (standard) workers (and their families) and policies for the poor was elaborated (cf. Leibfried/Tennstedt 1985). Sometimes women's poverty, the result of German (male) "standard worker" based policies, is explained. But this does not lead to a systematically gendered theory of social policy and the welfare state which relates paid and unpaid work, services as well as benefits.

This lacuna in the literature on welfare states caused particular problems in the Anglo-American countries during the 1980s when New Right thinkers and governments began to emphasise the importance of the voluntary sector, the family and the market as alternative providers of welfare to the state. Despite the re-emergence of the private, in the sense of the informal sphere of welfare provision onto the political agenda, it continues to receive little attention in the literature in these countries⁷. Yet arguably 'the family' has always been the greatest provider of welfare (Oakley 1986) and within the family, women. In Britain, Michael Anderson (1977) has shown that the percentage of elderly people in institutional care has remained remarkably constant during the twentieth century, while in the USA Mary Jo Bane (1983) has argued that there is no evidence that the amount of caring work performed by women has decreased in line with their increased employment (for Germany cf. Kerber 1986). In other words, women have added paid work to the unpaid work of caring. In addition, the volume of welfare provided by the voluntary sector was considerably larger than that provided by the state in most nineteenth century countries. The general lack of interest in the implications of women in the family and the voluntary sector providing as well as consuming welfare means that there has been no firm foundation for integrating gender into the analysis of welfare regimes. As Paci (1987) has commented, more needs to be done in terms of analyzing the nature of the mixed economy of welfare over time.

The failure to analyze the informal sector as part and parcel of the development of welfare regimes arguably stems from the tendency of the historical literature to focus on the factors determining the emergence of collective state provision or in Germany on employment based social insurance schemes. In Anglo-American countries this failure results from the simple equation of nineteenth century individualist solution to social problems with self-help and laissez faire.

Late nineteenth century social theory focused attention on families in the belief that social problems were susceptible to solution by the proper exercise of family responsibilities: of husbands to provide, or wives to manage, and of parents to play their part both in socializing children into habits of industry and thrift and in imbuing them in their turn with a sense of

7 For example, Rein and Rainwater (1986) define public and private solely in terms of market and state.

responsibility towards the needs of not only the children they would have but also their elderly parents. A similar overt commitment to the family as the solution to social problems has reemerged in the 1980s. Thus the American Enterprise Institute makes a very similar point to that of Victorian social investigators when it notes that 'another family in the same street even with a higher annual income, may be far less spirited, determined or socially organised' (p.11). In the early 1890s, Helen Bosanquet, a leading British social activist and pioneer social worker within the Charity Organisation Society compared the conditions of five families she observed access the back garden of her East London house. Of the children in number 4 she wrote, 'And yet their life might almost be as good as that of number 1; they live in exactly the same surroundings, and might go to the same school, it is wholesome home atmosphere which is wanting'. In the view of both the Victorians and the 1980s New Right, social problems disappear when the family is strong and effective, caring for the old and socializing children into habits of labour and obedience, albeit that the concern of Victorians was always to make participative citizens, whereas the New Right is concerned more the negative goal of abolishing welfare dependency.

In many western countries individualism and collectivism have thus become dichotomous, with actors portrayed as friends or enemies of the state. However, it would be more accurate to see them as positions on a spectrum. Individualists did not in the late nineteenth century (and do not in the late twentieth century) eschew social action. Rather, they have prioritised the treating of needs of individuals in a holistic fashion within the context of the family. In this approach women become both the agents and the objects of social reform (Frevort 1985; Sachße 1986; Riley 1988).

However, the idea of a world that constitutes a market totally made up of alike independent individual actors, who freely enter contracts, and where dependency exists by choice and as a result of free individuals' interacting has been alien to Christian democratic, especially, social-catholic thinking, which has prevailed on the European continent. Instead, the individual is seen as continuously embedded in vertical and horizontal relations, in gender and generation: child or parent, a wife or husband, an immediate family member, and, most fundamentally, as a woman or a man. Relatedness, even in the form of one-sided personal dependencies, is treated as a fundamental and constitutive human condition for which the dependent has little control. Consequently, policies have predominantly been rather designed to protect vulnerable dependents than to abolish dependence and to promote the idea of complementarity, for instance of capital and labor, husband and wife. The importance of differentiated roles for women and men (though of comparable value), the interrelatedness of these roles, and a common though less explicit natural subordination of women in social relationships for the sake of the family and the society have been traditionally stressed. Accordingly, christian democratic family policies should support women to live out their female potential, that is, to live a different but comparable life with different obligations and occupations. According to this tradition policies should respect the principle of 'subsidiarity'. It prescribes the responsibility of the smaller unit, for instance the family, rather than the wider community or the state to be the primary provider of help; only when this capacity is exhausted and/or in need of support will the state intervene.

Social and family policies following the principle of subsidiarity are guided by cultural assumptions of who cares for whom in which ways and with which means. The question of how someone should be cared for is inextricably linked to that of space and time to care, to employment and to the gender-specific division of paid and unpaid work. Social-conservative answers to the question of 'who should be the first to care' have varied remarkably, although the majority of them are based on the principle of 'subsidiarity'. That is to say, in the case of children needing care, first the mother, then the more distant family or kin, is expected to provide the care. Public provision is generally subsidiary in nature. Any intervention of those less close to the person with the problem has to be justified.

It is however often neglected that in Christian democratic thinking the principle of subsidiarity relies on solidarity of the wider community and is based on a continuous social dialogue to give room to the plurality of interests and policy positions. A community's solidarity is welcomed, or sometimes required, to support peculiar care relationships, e.g. the mother and child by money transfers and other measures as long as these foster, rather than replace, the parent-child-relationship in specific, or the desired aim, in general. Subsidiarity combined with solidarity characterizes welfare regimes with a Christian democratic tradition; it can also be found in secularized societies, like France or the Netherlands, which were formerly dominated or strongly influenced by the Catholic church or by religious competition (Wilensky 1981).

It would seem that between the late nineteenth and late twentieth centuries such explicit ideas as to the importance of the family as agent and object of social reform underwent an eclipse. Certainly social work with individuals in families was uncoupled from social theory and was no longer considered to be the main vehicle for achieving social change after World War II. But ideas about the bourgeois family form and the appropriate roles of men and women were built in to varying degrees in national programmes of social assistance and insurance.

The only academic literature so far fully to acknowledge the importance of the informal sector in the development of welfare provision has been the work of feminist historians. This has tended to focus on the contribution made by women doing unpaid work to the development of welfare provision, rather than on the implications of that work. This is a salient issue in considering women's political influence in building the future social Europe. We want therefore to comment on some recent research concerning women's political power.

Most recently Koven and Michel (1990) have emphasised the role women played in turn of the century maternalist politics in turn of the century Britain, USA, Germany and France, and have also suggested that in countries with weak central governments - the UK and the USA - women achieved greater influence than they were able to do either in the more bureaucratic early twentieth century German and French states, or late twentieth century institutional, corporatist states like Sweden. This is hard to prove. The field of influence measured by the amount of legislative change secured by even famous women philanthropists in the USA and Britain remained small. Also, in terms of outcome, the vast majority of nineteenth century British and American women remained poor; philanthropic effort was patchy and such benefits as it conferred were unevenly distributed.

Furthermore, to argue that women had substantial influence in the making of the welfare state is a large claim that requires careful differentiation. There is very little evidence to support the idea that women were able to transfer the power they achieved in voluntary organisations to the machinery of central government that established the framework of mid-twentieth century welfare provision.

In Germany this was due to many reasons: First, welfare reform and the building of the new social security regime was promoted by the "verbeamtete Bildungsbürgertum": civil service professionals with a law training. Women had no access to the universities; they could barely get any law training or law degrees necessary for a career in state or other bureaucracies nor did they have the vote before World War I. Second, as was said before, many ideas aiming at reconciling capital and labour originated in Christian (catholic) skilled male worker's associations which still fostered corporative craftsmanship traditions, vocational "brotherhoods" (zünftiger Berufsgedanke), incremental "status maintenance" policies for the (male) "worker aristocrat", and, on the other hand, protective regulations of (married) women's work. Third, after World War I the few elected feminist parliament members became even more torn between loyalty to mostly male dominated parties and women's issues. Many conflicting and contradictory ideologies existed within the BDF (Bund Deutscher Frauenvereine), the Association of Women's Organisations, especially after 1908, when women got the "Koalitionsfreiheit" (the right to organize). After the turn of the century, the influence of conservative and partly antifeminist groups strengthened within the BDF. Many women's groups in the BDF fought fiercely against any idea of the socialization of housework, childcare, women's work outside the home, equal rights in marriage, the family issues, and the workplace, sexual reform, and even - before World War I - against the vote. During the 1920s Christian (Catholic as well as Lutheran) women teachers' associations prevented a reform which would have allowed the employment of married teachers. Women landowners (often aristocrats) and members of the various homemakers' associations succeeded continuously in preventing any improvement in the working conditions of servants. In 1927 Gertrud Bäumer chair of the BDF and member of the DDP (German Democratic Party) resigned to the idea of a feminism beyond party politics and ideological partiality (cf. Schmidt-Waldherr: 1987). Thus, feminists helped to promote strong male breadwinner and women homemaker policies by a "difference approach".

In Britain as in Germany, many, probably a majority, of leading women social activists claimed the right to involvement in local politics which, until the late 1900s, controlled the most significant aspects of social policies (eg the poor law), but they were actually hostile to female participation in national politics, which they regarded primarily as being concerned with affairs of empire and therefore not a part of women's proper sphere. The world of philanthropy was gendered and women passed out of the voluntary sector and into the jobs of health visitor and social worker; men passed out of the administrative committees of charitable organisations and out of the settlement houses into policymaking positions in central government. And, as social work with individuals in their family context ceased to be regarded as the vehicle for achieving social change, so women increasingly became confined to residual welfare work dealing with

the 'social problem group', the equivalent of the late nineteenth century residuum or the late twentieth century underclass (Lewis 1991).

Susan Pedersen (1989) has shown how in Britain the feminist proposal for family allowances, which in 1918 asked for a social wage that would value women's work as housewives and mothers and at the same time remove men's argument for a family wage from wage bargaining and thus bring equal pay, was defeated. Three oppositional discourses, that of the labour movement, social investigation and the civil service mobilized to defeat the idea of the family wage and to dilute the policy of family allowances such that the intention behind the legislation enacted in 1944 consisted chiefly of a determination to keep down wage-push inflation.

It is, however, arguable that turn of the century women social activists played their part in bolstering the idea of the family wage and the bourgeois family form, in part out of a conviction that this represented the best hope for social order and stability, in part out of a shared concept of femininity that dictated what was acceptable for women and what women were best suited for, and in part because such a position made sense in the context of the fabric of working class women's lives.

Sometimes women confined themselves to social work with families and in behalf of family because of strategic or ideological reasons: the idea of women's moral superiority in life and family politics, women's "spiritual" and "social motherhood". Many fostered an idea of a new social harmony which was to be reached by stressing the public importance of women's different but equal qualities and qualifications (von Zahn-Harnack 1928: 19; Sachße 1986). In Germany, the majority of feminists in the bourgeois and the proletarian movement perceived women as wives and mothers first and gave priority to policies which were seen to better, humanize or even cultivate marriage and family life first. Thus, during the 1910s more and more feminists supported the demands for a male family wage, for stricter protective legislation for married or pregnant women and mothers, policies that had been promoted by the male workers' associations for very different reasons (cf. Knapp 1984, II.: 475; Hartmann 1976). Others developed a body of knowledge for women social workers doing "friendly family visiting" and "Sozialpädagogik" ("social educational theory") which was designed to compensate in cases where the family or school had failed in their educational tasks (cf. Bäumer 1929). But whatever political activity women chose, they needed the support and often the voice of gatekeepers among male professionals, bureaucrats, and representatives of the various male associations to put forward their demands. In 1899, Dr. Max Hirsch, already famous and influential as a physician and researcher in the field of social medicine, supported feminist demands for protective regulation of women's work, and especially the employment of female factory inspectors before parliament. German women had succeeded in launching feminist ideas and policies but had done so from the shelter of and often via male protagonists - many of them local politicians, social reformers and professionals, with a liberal Jewish background. And many late 19th and early 20th century feminists were either the wives or the daughters of men of this social liberal milieu or daughters (cf. Roth 1988).

In Britain, the nineteenth century poor law worked on the premise that individual moral failure was the root of destitution and that poor relief outside the workhouse and without the

imposition of a work test could only serve further to demoralize the recipient. This diagnosis was broadly accepted by the main charitable agency of the period which sought to work in cooperation with the poor law authorities. The emphasis placed on the importance of the development of character, on personal responsibility and on the family as the chief provider of welfare fitted easily into well-established Victorian beliefs regarding individual moral failure as the main cause of poverty. Social activists built a philosophy of personal social work which was to be performed voluntarily by middle class women as part of the fulfilment of their duties as citizens and which was designed to restore the character of the poor and to restore them to full participative citizenship. Victorian commentators focused on the family because its work was considered crucial to strengthening character and hence to achieving social change. Early social investigators were careful in their delineation of the causes of poverty to distinguish between drunkenness and specifically drunkenness on the part of the wife. The pivotal role of women in managing small amounts of money was widely recognised. Helen Bosanquet drew heavily on the work of the French sociologist Frederick Le Play, who argued that good family organisation was an essential factor contributing to the prosperity and contentment of a people. Where family members developed their sense of responsibility to one another, Bosanquet argued, 'the Family [always capitalised] presented itself as the medium by which the public interest is combined with private welfare' (Bosanquet 1906). The model for many leading British social theorists was the Elberfeld system, within which middle class people were legally obliged to visit and 'assist' the poor in the community, albeit that the element of formalization within the Elberfeld system was profoundly at odds with the British commitment to voluntarism.

The functional family consisted of husbands who were reliable breadwinners and wives who were good carers and efficient household managers. Victorian social activists focused on women's participation in the labour market as something that would threaten family strength and stability by undermining male work incentives. Helen Bosanquet (1906: 99) put it this way:

"Nothing but the considered rights and responsibilities of family life will even rouse the average man to his full degree of efficiency, and induce him to continue working after he has earned sufficient to meet his own personal needs. The Family in short, is from this point of view, the only known way of ensuring with any approach to success, that one generation will exert itself in the interests and for the sake of another, and its effect upon the efficiency of both generations is in this respect alone of paramount importance."

To suggest that turn of the century social theory and social action resulted in a large role for the informal sector and for women but at the same time served to embed the idea of the bourgeois family form in social welfare provision is not simply to argue that women social activists were the handmaidens of classical political economy and the agents of social control. Women's support for the family wage ideal had much to do with the onerous nature of early twentieth century household labour, combined with frequent pregnancy. In Britain, women who also had to engage in paid labour were pitied by their neighbours. Only as the conditions of female paid and unpaid labour eased did the support of the mass of women for the family wage fade and the concept become a contested idea. The inter-war feminists who sought to claim family allowances on the basis of women's work as wives and mothers and then to use the allowances to argue for equal pay were as convinced as labour women's groups of the primary importance of women's role as wives and mothers and were ready to accept, in a way that French women,

for example, were not, that women must make a choice between wife/motherhood and paid labour. This continued to be the position of women's groups until the 1960s, when both women's consciousness and circumstances - in terms of paid work - underwent significant and rapid change.

In any case, while turn of the century women social activists, both feminist and non-feminist served to strengthen the widespread commitment to the family wage and by this the male breadwinner model, they were not the policymakers who embedded it to various degrees in state welfare legislation. Women's influence was confined to other parts of the mixed economy of welfare. This has to be kept in mind when talking about women's lobbying for women's issues on the European level.

As we mentioned above, women centered EC directives and the EC court stress ideas of both: same treatment and equality of opportunities for women as workers. We further claimed that at any one time it is equality within and equality inevitably linked with the labour market: employment equality. But even this narrowed vision of equality seems hard to be realized on a European level if one looks at the different meanings and targets of a welfare state and of social policies traditions in the various EC nation states. In the following, we will sketch the ways in which and the extent to which national welfare regulations have served to produce the male breadwinner as norm and reality. Ideas about the bourgeois family form and the appropriate roles of men and women were, to varying degrees, built into national programmes of social assistance and insurance and make up for the male breadwinner outlook of a particular nation state.

IV. Gendering Late Twentieth Century Welfare Regimes

Very little attempt has been made to gender the analysis of welfare regimes. One could argue that welfare analysis and comparative welfare show the many problems of what Margrit Eichler (1988) calls "sexist" research: androcentricity, overgeneralization, gender insensitivity, double standards, and familism.

According to Esping Andersen's (1990) categorization of welfare regimes, the Scandinavian (social democratic) countries and, it may be additionally suggested, to some extent Britain, emerged from World War II with a commitment both to universally provided benefits and services based on citizen right, and to full employment. The conservative/Catholic countries (Austria, Belgium, France and Germany) emerged with a commitment to making the state and other wider institutions a compensator of first resort, through social insurance programmes organised so as to maintain strict differentials between occupational groups, and Langan and Ostner (1991) have added, between men as breadwinners and women as wives and mothers. The principle of 'subsidiarity' prevails limiting the scope of state provided services for individuals and families. However, in Germany, Oswald von Nell-Breuning, a famous Jesuit and teacher of social ethics, born 1890, argued during the 1950s pension reform debate that the principle of subsidiarity does by no means intent to drain individual's self-help. "Subsidiarity"

rather means, he claimed, that the wider institutions, the family, welfare associations, even the state are those first to create the preconditions which further the citizens' and the families' independence (Nell-Breuning 1956). Social conservatism stresses individual relatedness, relations and institutions: the married couple, parents and children, employer and employees. A liberalist individualism has not come to the fore until very recently in these states. The USA, to some extent Canada and Australia, and, by the 1980s, Britain developed 'liberal' welfare regimes, characterised by means-tested benefits and a residual role for the state.

These grouping of welfare states are both loose and disputed; Australia, for example, is certainly a low welfare spender and operates a variety of tough means tests, but it has had a long-standing commitment to wages-as-welfare, with centralised wage-bargaining machinery that is more reminiscent of post-war Sweden than anywhere else⁸. Esping-Andersen situates the Netherlands as a social-democratic welfare state like those of Scandinavia. But, historically, as a result of competing religious groups, a politics of "democratic pacification" (via pillarization: giving each group a political status of its own) emerged in the Netherlands. This led to tolerance and accommodation, mainly in the public sphere, to basic income policies on the one hand, and to a strengthened idea of family privacy and women homemakers, on the other. In many ways, the Netherlands resemble a Christian democratic regime. According to Knijn (1991), the Netherlands have like Germany a low level of individualization, no equal access to the labour market, the polity and state institutions, and a very low state and market household service profile. Knijn, therefore, groups the Dutch welfare regime together with Germany.

The major commitment of both conservative and liberal welfare regimes in the twentieth century has been to the development of insurance schemes that work via the labour market. Core welfare programmes have thus been above all the prerogative of the regularly employed who have been predominantly male. Focusing on the mechanisms for delivering welfare, Leibfried identifies two basic welfare state types: that centred on the wage/labour market and that centered on needs and acknowledges the greater or lesser extent to which different kinds of mechanisms have 'individualised' women as well as men. The Scandinavian states are categorized as modern because women are individualized and integrated into the labour market. But as Langan and Ostner (1991) comment, gender is not systematically integrated into his approach; when women disappear from labour markets, they also disappear from the analysis.

When gender is treated as a full variable in the structuration of welfare regimes it cuts across established typologies because of the division of paid and unpaid work. In most welfare systems, women's rights to welfare have been indirect, a function of their presumed dependence on a male breadwinner. While potential or actual motherhood has often provided the continued justification for making the grounds of women's social entitlements different from those of men, it has been as wives rather than as mothers that women have qualified for benefits in most state social security systems. Germany grants widow's pensions without any means testing, with nearly no regard as to years of marriage, number of children, and the widow's age. Women have

8 Castles and Mitchell (1990) use Luxembourg income data to conclude that in terms of vertical redistribution (rather than decommodification). Canada, Britain, New Zealand and Australia achieve more than they are given credit for in Esping-Andersen's analysis.

thus tended to make contributions and draw benefits via their husbands in accordance with assumptions regarding the 'family wage'⁹ and the bourgeois family form. Furthermore, in welfare regimes where the social security system operates a dual insurance/assistance model, this in and of itself tends to be gendered, with first class (insurance) benefits going mainly to men and second class (welfare/assistance) benefits to women.

Women with children and without men (male head of households) have historically posed a particularly difficult problem for governments. Over time, policies have tended to oscillate between treating these women as mothers, or, given that they lack a male breadwinner to be dependant upon, as workers. Thus, "lacking a male breadwinner" is a condition sine qua non for sometimes rather generous lone mother allowances, for example in some German (CDU) federal states or in France (cf. Schultheis 1988a; Schunter-Kleemann 1990c). The current swing in some welfare regimes, particularly the USA, towards treating lone mothers as workers accompanied by a moral crusade against teenage motherhood and sexuality has arguably more in common with late nineteenth than mid-twentieth century policy.

Governments have attached greater or lesser entitlements to women as paid workers, but the tendency has been, as we hope to demonstrate in our classification developed below, to make a dichotomous choice between treating women as wives and mothers, or as workers, with the former predominating. This has meant first, that women's substantial contributions to welfare, particularly their unpaid contribution, have been ignored and with them the direct entitlements that should have been their due; and second, that women's needs have been defined in terms of motherhood as a social function rather than on the basis of individual need¹⁰.

No government has succeeded in attaching a *significant* value to the unpaid work of caring that women do in the family and, to a lesser extent in the late twentieth century, in the voluntary sector. While most post-war welfare regimes have treated women as 'different', this has largely resulted in practice in second class treatment.

Because of the prevalence of the ideal of the bourgeois family form, we will suggest that *a majority of modern welfare states may be categorized as exemplars of a 'strong' male breadwinner model*. In its ideal form, this prescribed breadwinning for men and homemaking/caring for women. It was part of a much larger gendered division between public and private that informed the work of political philosophers after Locke and was taken as one of the measures of a civilized society by late nineteenth century social scientists such as Herbert Spencer who influenced Talcott Parsons' structural functionalist theory of the marriage and family system. Within an evolutionary framework Spencer argued that society was 'progressing' towards a position whereby all women would be able to stay at home in their 'natural' sphere. Medical science reinforced the idea that there was a biological basis for the gendered separation of spheres and an implicit equation was thus made between the natural and the domestic, and the cultural and the public. Enlightened social theorists like Habermas cannot but speak of the

9 The term 'family wage' is used in the English-speaking literature, see especially, Land (1980). We prefer to use 'male breadwinner model' here, because in cross national context it is less ambiguous, see below pp. 17-18.

10 For an elaboration of these points, see the work of Land (1978) and Riley (1981).

normative regulation of the family as somehow originating in nature (Fraser 1989). This has important implications for the "politization" of private (domestic) issues. While it may be argued that the bourgeois family form was a shared ideal (between men and women, employees and employers and the state) (Lewis 1986), it is important to note that it was never completely achieved. The male breadwinner model operated most fully for late nineteenth century middle class women or Post World War II wives of skilled "worker aristocrats" in a few industrialized countries. Many working class women have always engaged in paid labour to some degree.

In order to become reality, the breadwinner model, in its pure form, requires full employment and a continuous adequate male income; transfers which continuously supplement the latter; incentives for men to marry and stay married; and "derived" or direct "fringe" benefits for wives and married mothers, such as generous widow pension rights and alimony regulations after a divorce for wives and children. A different but equal treatment, positive discrimination, women specific social rights, would be needed to compensate for women's incomplete access to an independent market income.

In reality, as Sokoloff (1980) and Pateman (1988; 1989) have insisted, the two spheres of paid and unpaid work have been and are intimately interrelated rather than separated. Not least as a provider of welfare the family has been central to civil society, not separate from it. Over time the boundary between public and private has been redrawn at the level of prescription. For example, in English the phrase 'working mother' entered the language during and after World War II, but wage earning was always deemed a secondary activity and of 'secondary' importance to women. In Germany, mothers' work had always been against all rules. Wives' or mother's work did not appear on the political agenda in a more favourable light before the mid-1960s. Women were always assumed to be to some extent dependent, a part of the family supported by a male wage or income. Given that in modern societies independence derives primarily from a market income and, from full and direct participation in the market economy, the assumption that women were located mainly in the private (domestic) sphere supported by a male breadwinner also meant that women have only been partially individualized (cf. Ostner 1983). German sociologists speak of a "weibliche Alternativrolle", a role alternative for women, and an opportunity to "opt out" of the market. However for most women choice - whether to work or to be a homemaker or mother - has seldom existed. As regards social policies, the liberal dilemma whereby individuals in fact meant male heads of families, has thus persisted.

The prevalence of the idea of a male breadwinner model cuts across established typologies of welfare regimes and destroys ideologies and some precocious hopes. For example, Arnlaug Leira (1989) has shown that Esping Andersen's idea of a Scandinavian welfare regime breaks down as soon as gender is given serious consideration. The Norwegian model, which treats women primarily as wives and mothers, is closer in many respects to that of Britain than it is to Sweden.

Just as the male breadwinner model has not existed in its pure form, so the model has been modified in different ways and to different degrees in particular countries. We have deliberately chosen a range of countries that illustrate a variety of types. Britain, Germany and the Netherlands may be said to be *strong male breadwinner countries*; all have tended to treat adult

women as dependent wives for the purposes of social entitlements; but they differ as to the extent to which they developed policies, transfers or services to promote marriage and family life, thus, compensating for the risks and disadvantages for women in the male centered labour market. France has continued to recognise and promote women's position as *both* wives and mothers (albeit primarily as a product of a combination of both: pro-natalism and social catholicism, cf. Schultheis 1988b) and as workers and may be categorised as a *moderate male breadwinner* model. While the household is still the unit of measurement that determines need, the roles of family members are assumed to be significantly different from strong male breadwinner countries. Sweden (or Denmark) is categorised as '*weak*', in that since the 1970s women have been defined as workers *rather* than as wives and mothers.

We argue that the strength or weakness of the male breadwinner model serves as a predictor of the way in which women are treated in social security systems; the level of social service provision, particularly in regard to childcare; and the nature of married women's participation in the labour market. In welfare regimes that operate dual assistance/insurance income maintenance systems, those systems are gendered because of the gendered division of labour. Different mechanisms built in women's unpaid caring work in different ways and also elicit that work differently. Finally these aspects of the provision of welfare are intimately linked to the nature of women's labour market participation in ways that we shall attempt to chart. We go on to suggest that given that welfare regimes have all operated on a family breadwinner logic to the extent of consciously embracing or modifying it, the treatment of lone mothers will be hard to predict and that this will be especially true of strong male breadwinner states. The quantitative and qualitative predominance of the strong male breadwinner regime in Western Europe and its political implication for EC policies justify a detailed investigation.

(i) Strong Male Breadwinner States - the British and the German Case¹¹

In Britain, in line with the dominant turn of the century view of gender roles in the family and their link to social stability and welfare, one Cabinet minister tried to ban the work of married women during the 1900s, and during the inter-war years a marriage bar operated in all

11 We are aware that too many and too diverse countries fall into the "strong male breadwinner" category, as Annemette Sorensen, Paul Pierson and Stephan Leibfried (during the workshop) or Bill Jordan (personal communication) commented on this paper powerfully. Further more detailed research is needed. Some of the diversity can be explained by the diversity of value tenets: the concept of "the autonomy of the individual" has been much weaker in Germany. Both, Britain and Germany stress the value of "primacy of the family", due to strength of the first tenet Britain has traditionally refrained from explicit family policies, while Germany traditionally supported the institution of marriage and the family through cash transfers. On the face of it, our categorization might also turn out to be doubtful, if we move beyond Europe, for instance to the USA or to Japan. Yet, as regards the US case, David Ellwood (1988: 132) shows that while most married mothers now work, more commonly they work part-time or not at all. Only 27% work full time dependent on the age of their children. He then rejects the idea that single mothers should be expected to behave like husbands, working full time. Later in his book he echoes William Julius Wilson's thesis: that in order to fight ghetto poverty black men must be supported to become male breadwinners. We do not dare to easily extend our proposal to include non-western capitalist societies and cultures.

professions, as it did in the German civil service. Considerable effort was put into the education of working class wives and mothers in household management and infant welfare via the small army of female visitors attached to charities and increasingly by World War I, by health visitors employed by local authorities. This pattern of thinking about the family, which was the dominant mode of thought about the 'social problem' meant that the policymakers faced a number of contradictory pulls. While women's welfare as wives and mothers was paramount, social policies were not permitted to undermine the man's responsibility to provide for dependants. Thus, national health and unemployment insurance introduced in Britain in 1911 did not cover women and children unless the woman was in full-time insurable employment (only 10% were so placed). Nor was much protection offered the married woman as worker; Britain failed to implement paid maternity leave and never ratified the ILO Washington Convention provision for six weeks paid leave. Again, the argument was that the father must support his family and that women's waged work was detrimental to the welfare of children and of the stability of the family. In Britain, protective labour legislation was, as Mary Poovey (1989) has commented, the obverse of control. The concern was not so much to maximise the welfare of working women as mothers, but to minimise their labour market participation, a position that was shared by male and female trade unionists and as we have suggested above, by middle class women social reformers. The position of women workers was more complicated in that while there is evidence that they supported the family wage or male breadwinner ideal, their material circumstances dictated their need to earn.

Under the post-war Beveridgean settlement, women continued to be treated as dependants for the purposes of social security entitlements. Beveridge (1942) wrote at length of the importance of women's role as wives and mothers in ensuring the continuance of the British race (at a time of fears about population decline) and insisted on marriage as a 'partnership' rather than a patriarchal relationship (Lewis 1983). It was, however, a partnership in which the parties were equal but different. Hence women were defined as wives and mothers and therefore as dependent on a male income. Married women were accordingly invited to take the 'married women's option', paying less by way of contributions and collecting less in benefits. German women could cash-in their social security contributions when getting married until the late 1960s. The married women's option was not abandoned in Britain until the middle of the 1970s, with the passing of equal opportunities legislation. In the Netherlands, also a strong male breadwinner country, men and women were not 'individualised' for the purposes of insurance until the 1980s. Britain and the Netherlands operated a dual insurance/assistance model, with women's needs being met largely under the latter. From the mid-1970s, Britain offered an allowance for the unpaid work of caring for infirm dependants (the invalid care allowance) within the social security system, but, interestingly, at the very same time that legislation was being passed to provide women with the means of legal redress on an individual basis against sex discrimination in pay, promotion, hiring and other mainly workplace related issues, the invalid care allowance was first denied to married women on the grounds that caring was part of the 'normal' duties of such a woman.

West German policies of the 1950s followed the line 'neither Nazi nor GDR' and emphasized the role of the family as a bulwark against communism and other forms of totalitarianism. They

endeavoured to balance continuity with discontinuity, change and stability, while relying on institutions which were, as it was argued in the case of the family and welfare institutions, 'uncontaminated' and sound (Schelsky 1960). Thus, marriage and family were constructed such that privacy meant freedom from immediate state intervention. NAZI policies had virtually abolished self-regulated institutions, the plurality of welfare associations and the private world (*Lebenswelt*) of marriage and family. The man's role as the husband and the father or, in a strictly sociological perspective, as the gatekeeper of the boundary between the public and the private domestic had been weakened. According to West German public voices during the 1950s (Joosten 1990), the East German system was close to repeating NAZI policies albeit from a different perspective. By concentrating social policies on children and full-time working mothers the GDR was blamed for creating a 'fatherless society'.

In 1949, thanks to the courageous and tenacious intervention of, mainly, Elisabeth Selbert article 3 ruling equal rights of men and women eventually became part of the West German Grundgesetz (constitution). Since then its interpretation and implementation has continued to conflict with article 6, which rules that the institution of marriage and of family are protected by law. Article 3 necessitated a reform of the *Bürgerliche Gesetzbuch* (BGB, the Civil Code). The BGB had remained nearly unchanged since 1900 and also survived the NAZI era. But the harmonization of marriage and family laws with article 3 was repeatedly delayed and the man's guardianship over his wife and children only reluctantly abolished. In West Germany the man, husband and *pater familias*, legally had the last word in marriage issues, something that did not change until 1957 after a fierce and controversial debate in parliament. But until 1977 he was empowered to stop her taking paid employment, if he felt this to be detrimental to family life, or alternatively to force her to earn money, if his income was deficient. And he had the last word on issues to do with children until 1980. The man's status and role was baked by the idea, which became the reality, of the 'immobile woman' who waited (and still waits) for husband and children to return home. The model was the mobile man and the immobile, caring woman¹².

Women as dependants became the objects of a whole set of family policies, albeit at first these were more exhortatory than anything else (Münch 1990). They emphasized the importance of a male breadwinner in the market, and the primacy of the *pater familias* in both the private domestic world and the political sphere. Divorce was made more difficult for men in order to protect the older wife from desertion in favour of a younger woman. Transportation policies and the ideology of the auto'mobile' society supported the mobility of the working husband and the immobility of his wife at home. Mobility outside, stability inside the home was an idea that served best middle class men returning home after a stressful working day.

In comparative perspective, the peculiarities of the opening and closing hours of kindergartens, schools, shops are a striking feature of West Germany. Publicly funded child care facilities, if available, are in principle designed for children older than three and then only part-time, open mainly during the morning hours. Schools finish on one day after two hours, the next day after six, but are always closed at lunch time and their hours are premised on the idea of the immobile woman waiting at home with a cooked lunch (Leibfried and Ostner 1991). In contrast with

12 This model is now being imposed on many women in the GDR.

societies which still have a strong rural tradition, West German children are not expected to look after themselves during the afternoons, but to stay under the parent's custody. 'Schlüsselkind', describing the child with a key around her neck, is closely linked to child neglect. The theme of 'returning home and somebody there making a home' became a kind of 'second nature' to many women and one element in the continuous double-bind women have experienced. It helps to explain the comparatively low profile of household services provided by the market or the state (Becker 1989; Scharpf 1986).

Until recent years, West Germany has been highly inclined towards middle-class political and social values which have included that of the husband-breadwinner. His authority has been only superficially undermined by the 1977 reform of marriage and family law. During the 1960s the German Constitutional Court (Supreme Court) maintained that housework and employment are of comparable value; that, therefore, pension schemes should attach some monetary value to women's unpaid work within the family (Sachße / Tennstedt 1983: 115). In response to the Court's statement the 1986 Child-Rearing legislation was passed allocating pension rights to time spent as a caretaker at home. For example, a parent is entitled to draw a pension for child-rearing amounting to about thirty DM per year for each child for one year, for children born after 1992, for a maximum of three years (per child), in both cases provided the parent was the primary carer at home and worked less than 20 hours a week. The policy, albeit gender-neutrally worded, was justified with reference to the overdue equalization of the homemaker and mother's poor status with that of the privileged career woman (a situation which has rarely existed). West German mothers highly accepted this legislation. Criticism has since revolved solely around the notional monetary sum that is attached to caring.

Germany now grants very frail elderly or handicapped people needing institutional care and who otherwise had to stay in an institution a small amount of money (DM 400.-) - less than the minimum welfare benefit - to pay home aids. This money can be given - as a kind of pocket money - to the caring relative, too. Sachße and Tennstedt (1982) hint at salient inconsistencies built into the relationship between the marriage or family system and the German social security system - between family and public duties, paid and unpaid work. They argue that the main result of various legal marriage and family as well as of social law reforms in the 1970s was to shift part of family obligations to provide *financially* for their members and relatives towards "public solidarity" and its institutions. For example the pension system has shifted its focus towards a view of family members as independent individuals with individual rights; it has thereby broadened the right to claim social security for individual family members and improved the situation of orphans, for instance. But this trend only concerns monetary alimony or support (cash); it does not apply to support *in kind* (care work). In the latter case, the principle of subsidiarity reigns and has even become strengthened (113). The German health insurance law still presupposes that unpaid (mainly female) care work abounds within the family and kin. A sick husband cannot claim any benefits for his wife's support in handling kidney dialysis at home from health insurance (Federal Social Court 1977), because this kind of service belongs to the field of family self-reliance and solidarity. And if any home help is finally acknowledged by the insurer, it has to be a professional one. In that case kinship does not

matter. These are two ways of excluding women's unpaid services from public acknowledgement and transfers.

Examining recent employment statistics and panel data, Landenberger (1991) as well as Schulz and Kirner (1992) argue that carers' and maternity policies have relieved the labour market of surplus labor that would otherwise be unemployed. They show to what extent parental leave policies work as a flexible 'exit-and-part-time-reentry mechanism' turning structural constraints (i.e. unemployment) within the labour market into a female problem to be dealt with by different categories of women workers and non-workers. Additionally, the program works practically at the expense of policies to extend public childcare, and particularly disadvantaging the growing number of mainly single women and mothers who have to work continuously and full-time.

As recent longitudinal (panel) data indicate, (West) German women have continued up to the present to reluctantly leave their homes and have men and children cared for by others. However, a new 'standard life course' for women has incrementally evolved. Mothers of older cohorts born between 1909-1929 either did low paid work (mostly industrial) all their life or - as was the case for the majority - had never been employed or gave up employment for marriage. The younger cohorts, born after World War II, entered the labor market in larger numbers and at comparatively later ages, due to mainly higher education, and left employment for an average 13 to 15 years to care for an increasingly smaller number of children. Those who reentered jobs earlier, worked predominantly part-time. Most of the women who interrupted their employment - even those with as little as two years of absence from work - could and can hardly make up for the loss of income, status and occupational prospects (Schulz / Kirner 1992).

Evidently, the model of a "strong male breadwinner" predicts relatively low levels of female labour market participation and of the social wage. All welfare states have experienced a significant increase in women's labour market participation rates, particularly for married women. In Britain, married women's participation increased from 10% in 1931 to 26% in 1951, 49% in 1971 and 62% in 1981. On the face of it, British married women's labour participation rates have more in common with those of France than with Germany or the Netherlands (Table 1). But it is important to realise that virtually the whole of the post-war expansion in married women's work in Britain is accounted for by part-time employment (Chart 1). The Netherlands and Britain both have very high part time employment rates, as does Sweden (Table 2a). But here again it is important to distinguish the meaning of part-time work (Table 2b). Whereas in Britain and the Netherlands it tends to be 'precarious' (following the OECD definition), short part-time work attracting few benefits, in Sweden most women working part time are in fact in full-time jobs, but are exercising their right to work a three-quarter time day while their children are small¹³. Mainly because of demographic changes the size of the male and female workforce has decreased in Germany. This trend is seemingly compensated for by an increase in women's activity rates. But since the 1960s in Germany, too, the increase has been mainly due to part-

13 Comparatively higher percentages of part-time work also indicate the strength of the male breadwinner norm or women's dependency on another income, be it a partner's or state transfers. As chart 1 suggests, until recently Finland has deviated from the "Western" as well as from the Nordic model.

time work. However the growth in part time employment has slowed down. More than one third of all employed women and 50% of married working women work part-time. 90% of part-time work is female employment. The majority of women working part-time jobs are included in social insurance schemes and only that kind of part time work is visible and counted. There is a rapid increase of atypical or non standard (not insurance based) forms of marginal employment, especially of very young unskilled women or of women aged between 45-55. These comparative data suggest that many women still have to rely on a male income and on derived forms of a male breadwinner income at least in old age. This is formally less true for the Netherlands: Dutch citizens who had lived in their country for 50 years have the right to a universal old age pension independently from any labor market activity which is more generous and convenient than the British income support or German welfare benefit (HFL 1103,19 per month). In any case, if one talks about women's increasing or high labour market participation, it is crucial to consider its very nature.

Germany, Britain and especially the Netherlands have large numbers of non-working mothers of below school age children. This is related to the low levels of the social wage and in particular of provision for full time or at least part time child care for children of all ages in these countries (Table 3 and Chart 2). It is also significant that strong family wage or male breadwinner countries tend to make less provision (thereby arguably giving less encouragement) to women workers who become mothers. As the German case suggests, parental leave legislation can discourage mother's employment. German social policy tradition has promoted a policy which channels women with children towards a part-time exit of the labour market and which does not at all employ any positive action towards a simultaneous arrangement of work and family. In Britain women with two years continuous service have the right to 11 weeks leave before the birth of a child and 29 weeks afterwards at 90% replacement income for 6 of those weeks, and the right to reinstatement. But, given the precarious labour market position of British women, only 60% qualify. The 1992 EC Maternity Directive will improve their situation. In the Netherlands, women have the right to 12 weeks at full pay but no further statutory rights.

Thus strong male breadwinner models tend to draw a firm dividing line between public and private responsibility allowing only for part-time or and other forms of discontinuous work and for a "sequential" combination of work and family. But as we have shown, they differ as to what kind of incentives they give to men to be husbands and the compensations they grant to women for the opportunity costs of leaving employment and caring at home. The German income taxation system treats the married couple as a or "the" economic unit - not the family or the individual (cf. Schunter-Kleemann 1990c). Together with its progressive taxation principle it privileges middle average income, one earner, childless couples (Pfaff / Roloff 1990). The British and Dutch systems are individualized but give tax reductions to married one earner couples.

If women enter the public sphere as workers, they must often do so on terms very similar to men (they experience what we call a "sameness treatment"). In this case, it is assumed that the family (that is women) will provide child care and little or minimal provision is made for maternity leaves, pay and the right to reinstatement. During the 1980s, in Britain, the public/private divide has been drawn more tightly and the maternity rights women won under the equal opportunities

legislation of the mid-1970s have been significantly weakened. While no effort is now made to stop women working, the assumption is that they will be secondary wage earners and, despite large numbers of women working in some strong male breadwinner countries like Britain, they tend to be in short part-time, low status work. The situation is somewhat different in Germany and in the Netherlands. Germany while stressing the importance of privacy and marriage and family solidarity employs a politics of "different work but of equal value" attaching some value to care work at home. The gendered division of labour is strengthened. Britain and the Netherlands on the other hand know forms of citizenship based basic income independent from employment; but they do not promote women's labour market integration to more than part-time employment. Davies and Joshi's (1990) econometric analysis of gross cash earnings foregone by a woman bearing 1, 2 or 3 children shows the costs in Britain and Germany to be similar and high at 50% of income is foregone. In France and Sweden the costs are similar and low at 10% or less.

(ii) Moderate Male Breadwinner Countries - the French Case

The picture is somewhat different in France, where women have effectively always gained entitlements as citizen mothers and as citizen workers. Just as much emphasis was placed on the importance of good mothering in France for pronatalist reasons, but women's role in the labour force was also recognised. French efforts to improve maternal and child welfare, by for example, the Gouttes de Lait were exported to Britain, but in a country where the percentage of women in the labour market rose during the late nineteenth century rather than fell as in Britain, the recognition of the needs of women as workers as well as mothers was much greater. In both, Britain and Germany it became part of the badge of working class male respectability to keep a wife and the trade union movement bargained for wages using the breadwinner model. But in France, where early twentieth century trade unions were relatively weak (Pedersen 1988), and where as late as 1968 20% of working women were employed in rural enterprises (Silver 1977) working alongside their husbands, the exclusion of married women from employment was neither so possible or desirable. In France, there was no organised attempts by either government (other than during the Vichy government of World War II) or trade unions to push women out of the labour market, indeed paid maternity leave was introduced in 1913 (Jenson 1986). Patriarchal power was not absent in France, but it was exercised at the individual level. Similar to Germany, husbands had the right to prevent their wives taking a job (until 1965), and exercised full 'parental authority' (until 1970) (Loree 1978). But given the occupational structure in France, whereby a large percentage of married women worked in family businesses, together with the increased post-war desire for two incomes, family patriarchy had little impact on married women's labour force participation.

A significantly higher percentage of French women have continued to work full-time throughout the twentieth century than in strong male breadwinner countries. In the early 1980s, the percentage of women working continuously throughout childbearing and childrearing was ten times higher than in Britain (Crompton / Hantrais / Walters 1990). In addition, measures of

vertical segregation show the position of France to be somewhat better, for example women make up 25% of managerial and executive workers in France compared to 19% in Britain. During the 1980s the picture has become more blurred as the restructuring of the labour market has exacerbated gender differentiation. Thus Jenson (1988) and Mazur (1991) have pointed out that while the 1983 Loi Roudy represented a strong measure of 'equality' legislation that notably provided for action to counter sex discrimination and segregation at the workplace level, government action also resulted in increased female unemployment (Beechey 1990) and encouraged part-time work, which had previously been insignificant for women. Nevertheless, in encouraging part-time work as a way of restructuring the labour force, government also regulated it, making benefits such as parental leave available to part-time workers. This is contrary to the position in Britain, where part-time workers are excluded from most benefits, including pension provision (there is no parental leave). Thus France has recognised both women's right to work (even though Mazur (1991) would argue that this remains largely symbolic) and promoted equality in the sense of 'sameness' to men at the workplace, while also recognising the 'different' needs of working mothers. French women giving birth to a child get between 16 and 26 weeks maternity leave at 84% replacement income and 90% of working mothers qualify (Buchholz-Will 1990b). Public child care provision is among the best in Europe (Schunter-Kleemann 1990c).

The concern of policymakers in France about the welfare of children above all, which is reflected in the level and quality of child care provision, has redounded in large measure to the benefit of women. The social security system has historically prioritized horizontal redistribution (towards families with children), rather than vertical redistributions between rich and poor. In 1945, generous family benefits ensured that a French family of four doubled its income, whereas a British family received only fifteen shillings when the average male wage was 121 shilling (Pedersen 1988); similarly in 1974 a family with three children received four times its British counterpart in family benefits (Laroque 1985). Insofar as French family benefits have been largely financed through the wage system - Schultheis (1988b) mentions the comparatively low French wages - and a significant portion of them have been paid to women, horizontal redistribution has also proved to be redistribution between the sexes, albeit that this has been an unintended policy outcome.

Between the 1930s and 1977, the social security system paid a generous allowance to families with a single wage earner (*mère au foyer/salaire unique*), but this did not stop a significant increase in married women's labour market participation rate during the late 1960s and early 1970s. In face of changes in married women's labour market behaviour, French governments struggled explicitly to maintain policy-neutrality regarding women's role. In 1970 the left government introduced the '*frais du garde*', an allowance for child care and in 1977 this was rolled up with the allowance for single wage earners into '*complement familial*'. During the course of the Senat debate on this measure, the minister, Simone Weil, stated firmly: '*Le complement familial serait versait aussi bien aux mères restant au foyer qu'à celles qui exercent une activité professionnelle. Cette neutralité nous a semblé également équitable*' (Journal Officiel, Senat Débats, 22/4/76.609).

However, as Pierre Laroque (1985) has pointed out, the complement familial continued to benefit one-earner families more than two-earner families. This was in part because the benefit (like all benefits introduced after 1970) was means tested, vertical rather than horizontal redistribution having become more of a priority for French governments. Research during the 1980s (e.g. Ekert 1983) has also shown that working wives pay a disproportionate amount towards funding of family benefits. The operation of the joint tax system also works to penalise married women's work and may account for the greater incidence of part-time work among higher paid women (Crompton / Hantrais / Walters 1990), while the interaction of the tax system with a benefit system that gives significantly more to large families may also encourage lower income women to stay at home (Hantrais 1990). Third children attract more family benefit via the 'allocation au jeune enfant' and more tax relief; working women giving birth to a third child are entitled to longer maternity leaves. Such policies legitimated by pronatalist concern accompanied by institutionalist tenets emphasising the family above the individual, have recognised motherhood as a social function rather than the needs of individual mothers; however they have not been without some gains for women.

(iii) Weak Male Breadwinner States - the Swedish Case

Denmark is, Norway, Sweden and Finland will soon be members of the EC. We suggest that these countries belong to the range of weak male breadwinner countries with Finland representing one end of a continuum and Norway the other (from a very weak towards a moderate breadwinner model). Post-1970 Sweden can be placed in the middle. The following will concentrate on the Swedish case which can be placed (like Denmark though for different reasons) in the middle of the continuum.

Post-1970 Sweden exemplifies a weak male breadwinner state. This was not always so. Pre-World War II Swedish social democracy embraced the idea of difference in its thinking about the relationships between men and women, largely as a result of the great influence wielded by Ellen Key. Her ideas inspired the Social Democratic movement as to what was 'good and rightful' in everyday life¹⁴. The most powerful image in Swedish social democracy has been that of building the 'people's home', which encompasses the double idea first, of society and state as a good family home, where no one is privileged, all cooperate and no one tries to gain advantage at another's expense; and second, of ensuring that productive capacity is used to the advantage of people and their family. Whether in the big 'people's home' of state and society, or the small people's home of individual household and family, women's contribution (and rewards) were allocated on the basis of wife and motherhood in line with the breadwinner model (Hirdman 1989). These ideas were based on social and cultural homogeneity.

The situation in Sweden changed to resemble the French model during the 1930s and 1940s, when the Social Democrats' conceptualisation of women's place in society was significantly

14 Ellen Key wrote at length and was translated. Two of her best known books are: *The Woman Movement* (New York: G. P. Putnam's Sons, 1912) and *The Renaissance of Motherhood* (New York: G. P. Putnam's Sons, 1914).

influenced by the writings of Alva and Gunnar Myrdal, themselves members of the party. Picking up the common theme of national suicide in the face of falling birth rates, the Myrdals insisted on 'democratic' population planning (which differentiated them from the extremes of national socialism) and the importance of society investing in the welfare of families. But alongside this maternalist politics and policies to encourage a higher birth rate, they also insisted that state policies should aim to realise the potential of each individual. Thus while women's roles as mothers acquired 'national' significance, so it was also insisted that women had the right to develop their talents in other fields particularly that of paid employment. The Myrdals argued that if the state wanted babies it must also make it possible for mothers to work, albeit sequentially (Kalvemark 1980). During the late 1940s Alva Myrdal developed with Viola Klein her influential idea of 'women's two role', whereby women entered the labour market until the birth of a first child, returning when the child left school (Myrdal / Klein 1954). The state and employers were asked to support motherhood and married women's role as workers, albeit that these would be, much more than was envisaged in France, sequential and therefore separate endeavours. It was not envisaged that workers would also be the mothers of small children. In terms of Myrdal's policy inheritance in Sweden, it was important first, that she sought to reconcile the claims of equality and difference within a single strategy; second, that her main justification for such a strategy was, not unlike the French, the nation's need for women's labour power and for more babies, rather than women's own needs; and third, that she was content to change women's lives without pressing for concomitant changes in those of men.

During the 1950s and 1960s the labour force participation rates of women over 15 remained constant at about 30%, with the low participation rates among married women in the childbearing years that were consistent with the dual roles model. But during the late 1960s and early 1970s, Swedish social democratic governments took conscious steps to bring all adult women into the workforce and to make 'the two *breadwinner family* the norm' (Hirdman 1989, our ital.). As a result, the basis for women's social entitlements has been transformed. Since the mid-1970s they have been treated as workers and have been compensated for their unpaid work as mothers at rates they could command as members of the labour force.

The most important changes designed to promote women's market work were first, the introduction of separate taxation in 1971. This, together with high marginal tax rates, has meant that it has been generally favourable for family income if a woman goes out to work rather than the man adding extra overtime hours. In Britain, where separate taxation was introduced in 1989, the labour market effects are not the same because of low progressivity in the tax system. The contrast with the FRG, which operates a joint system of taxation with married couple taxes set at lower rates than for single people is striking. Whereas in Sweden women earned 39% of after-tax income in the late 1980s, the figure for Germany was 12% (Gustafsson and Stafford 1988). The second major change was the increase in the number of places in public day-care. Whereas 10% of all children under school age had places in 1968, the percentage was 27 in 1979 and 47 in 1987. Finally, in 1974 a scheme of parental insurance was introduced. Rather than women being given flat rate maternity benefits, they were offered compensation for loss of market earnings. Men were also offered the same 90% replacement of earnings if they chose to care for children. In 1974 legislation was passed giving a parental leave of six months to be

taken before the child reached four years together with a ten day per year child sick leave. The leave was extended again in 1975, and again in 1980 to twelve months parental leave and 60 child sick leave days.

Not surprisingly the labour market participation rate of women in Sweden increased dramatically. Participation rates in the 1950s and 60s were lower than in many other western countries, but by 1986 89.8% of women aged 25-54 (only 5% less than men of comparable age) were in the labour market and 85.6% of women with children under seven worked compared with 55% in the USA and 28% in Britain. By 1984 only 7% of Swedish women between 25 and 54 were classified as 'housewives'. Effectively Swedish policies have succeeded in getting women both to work outside the home and have children. Compared to the FRG, for example, more than twice as many Swedish mothers of pre-school children work, while in 1984, the West German fertility rate was 1.27 and the Swedish 1.61.

Thus Sweden may be seen as having moved away from the male breadwinner model and towards treating women as well as men as citizen workers. Women's claims as mothers and carers have then been grafted on through parental leave schemes and the like. An option for the dual breadwinner model and the making of social entitlements for women dependent on their labour market status would seem to offer more in terms of benefit levels (paid at market rates) and the level of the social wage than strong family breadwinner models. It is easier to combine paid and unpaid work in Sweden, but this is not to say that it is easier for women to 'choose' to engage in paid work. Women have been 'forced' into the labour market, but they have retained the unpaid work of caring; men's behaviour has not been changed. In terms of their labour market position, Swedish women are better off in the sense of finding themselves in less precarious employment than British women, for example. But it has been argued that the reorganisation of women's labour together with policies such as parental leaves, which are taken by women rather than men, have reinforced the sexual segregation of paid labour, which is among the worst in the western world (Jonung 1984). In this sense, the Swedish model has less to offer than that of strong male breadwinner states and considerably less to offer than France, which provides almost as much for the working mother (parental leave is unpaid, but child care provision is better) and has also taken equal opportunities/sex discrimination legislation further than either Sweden or the strong male breadwinner countries.

Scandinavian societies seem to have developed women's individualization and independence to its full meaning: individual taxation, laws that promote the "symmetrical" family, marriage as an optional relationship of two independent breadwinners, abolishment of a "wife's alimony", no or little widow's pensions, the freedom to live whatever family form, no statutory family obligations (Kulawik 1992, 228). The welfare state became an important provider of child care and also took care of the elderly, while caring relationships between the young and the old mainly have taken the form of occasional help and socializing. However, on the whole, the Scandinavian regime seems to have much in common with a traditional, i.e. agrarian, society, an extended *Gemeinschaft* based on group similarities rather than on diversity and individuality, with social rights tied to everyone of the actual and future working population, be it child or an elderly person, who belongs to the relatively closed community. And similar to traditional societies, the traditional gender segregation of work and obligations has survived. Nordic

societies seem to rather prevent a public private dichotomy fundamental to other western societies. Instead, it has created an 'all in the home' culture which is highly based on social and ethnic homogeneity.

Thus, the use of the male breadwinner model as a measure by which to construct a new, preliminary though, typology of welfare regimes that more realistically represents women's social rights reveals the complex and contradictory ways in which paid and unpaid work as well as women's being alike or different to men have been recognised. In addition to the many systematic and methodological problems connected to our approach, we must enter a note of caution about the fact that a moderate male breadwinner country like France appears to do rather well on this measure. If our categorisation were to focus on other important aspects of the public/private divide, such as the right to sexual freedom, then the balance would undoubtedly shift away from France and towards a country such as the Netherlands with its policy of tolerance of deviant life-styles. In any case, assessing a welfare regime has to consider both sides of the coin: how social policies effect the private (domestic) and the public.

(ix) Lone Mothers

Finally it may be useful to push our preliminary sketch of gender regimes further by considering the position of lone mothers within the male breadwinner model. They constitute a useful 'border case' and a challenge to our typology, insofar lone mothers cannot be talked of as appendages of male breadwinners but are head of households themselves, individuals in this sense¹⁵. Integrating lone mothers may easily lead to a new categorization which pays more attention to family policy and child support regimes. The following considerations are therefore even more rudimentary than the previous.

Should mothers with children and without men be treated as mothers (different from men) or as workers? As Ellwood (1988: 133) contends poignantly:

"A provocative question is, Do we want single mothers to behave like husbands or like wives? Those who argue that single mothers ought to support their families through their own efforts are implicitly asking that they behave like husbands. If a woman is to have any real hope of supporting herself and her family, she will have to work all the time. (...) Conversely, those who say single mothers ought to have choices about how much to work outside the home are saying that single mothers ought to have the flexibility of wives. Either of these positions has troublesome implications."

Many married mothers do not work at all and rely on a partner's income which in the case of the non-working or part-time working single mother has to be replaced by welfare. If the state steps in to fill the role of the male breadwinner on what terms should this be done? The GDR, for example, treated women both as full-time workers (same as men) *and* as part-time parents (different from men), whereas men or male partners became formally invisible as fathers and as husbands. GDR mothers - married or not - got various benefits which men (as fathers) could not claim, for example housing schemes, a day off per month (Hausarbeitstag), lesser years to work before retirement and full-time public child care.

15 The term is Poovey's (1989).

In nineteenth century in many European countries, lone mothers were treated as workers. Most local poor law authorities expected them to work to keep as many children as they could (usually one or two) and, for example in Britain, the remainder were taken into the workhouse. Widows were treated considerably more favourably than unmarried mothers. The British government considered pre-World War I policy of some US states in giving widows pensions, but decided that it was not possible to monitor respectable and 'deserving' behaviour on the part of recipients; widows pensions were not granted until 1925. Most countries made provision under their social security systems for widows, who of all the types of lone mothers were considered blameless and who by the logic of the breadwinner model required protection. The problem after World War II has been the increased numbers of divorced women and unmarried mothers. Britain considered introducing a single parent benefit at the time of the Beveridge Report in 1942 and again in the 1970s, but was never able to reconcile moral and social imperatives. Unmarried mothers in particular threatened to undermine the bourgeois family form and their treatment remained separate.

Treating an individual as embedded in relations and institutions (similar to France), be it marriage or the family, the (West) German welfare regime has been strongly biased towards marriage as the basis of the family and of women's lives. Since 1911, the worker's widow and his children have been entitled to draw a pension on his behalf - a measure which followed the principle of status maintenance. Widow's provisions have been constructed to compensate for the loss of the partner (his income) without significant qualifications such as working ability, age or length of marriage. Conversely, the majority of never married women, fortunately decreasing in number, however, had to earn their own - then poor - pensions through low wage jobs; they were nevertheless until the 1970 pension reform severely poor in old age. Correspondingly hard has been the never married low qualified mothers' lot - few in number, however, up to now - and that of the growing number of divorced or mothers.

The 'relationist' nature of the German welfare regime becomes apparent in the treatment and lives of unmarried mothers. The strong emphasis on the married couple and married parents as the basis of the family, resulted in a distinction between legitimate and illegitimate children unknown, for instance, in the GDR or the Nordic countries. Although the FRG constitution of 1949 stipulated equal legal treatment of all children, this was not achieved until 1970. Until a recent Federal Court ruling, one-parent families have been viewed as defective. State custody to replace the missing parent is no longer obligatory but is still required, if the absent parent does not pay alimony or if the caring parent, usually the woman is deemed to be a bad parent. Legal reformers argue today that the child born outside of marriage has a formal right to shared parenting by both mother and father (Limbach 1991: 39). This should, however, not be mistaken as a general plea for a new gender division of labour, but is rather a new legal approach to strengthen the custody rights of unmarried fathers to children living with the mothers.

The German system of parental leave legislation "privileges" jobless or low income lone mothers' households to some extent and for a short while: They can claim *Erziehungsgeld* in addition to social assistance and the fathers' payment; these payments amount an average monthly income of a full time female blue or pink collar worker. Some CDU Federal states invented a three years "*Mutter und Kind*" ("Mother and Child") program for women without

partners to prevent them from having an abortion or to encourage this group of women to raise the child by themselves as an alternative to local state financed forms of childminding (Tagesmütter). Franz Schultheis (1988a) analyses how in this case the state imposes "him"self as husband and father forcing lone mothers to live a quasi-monogamous (no man in house) and isolated in the home. Yet, the state father "deserts" these women after three years.

The extent to which a society employs a dual morality towards mothers by attaching privileges to wedlocked mothers, ignoring those outside is illustrated by the differing labour market profiles of lone and married mothers and their household income. In Germany, children born outside marriage and their mothers are economically worse off than children of divorced or widowed mothers. In contrast to the majority of West German married mothers, 76 per cent of unmarried mothers do paid work, many of them full time; the majority is poorly paid with 60 per cent earning less than DM 1600 in 1988 (Nave-Herz 1991: 5). More unmarried (31 per cent) than divorced mothers do not or get only irregularly payments for their children. Unsurprisingly, nearly 50 per cent of unmarried mothers live on family incomes below the poverty line; 15 per cent have to claim welfare benefits (Limbach 1991: 37). Further research is needed in order to explain what can be called a "welfare paradox": although (West) German welfare (social assistance) is more generous and less humiliating than the US AFDC, thus giving incentives to have longer spells of living on welfare, most German lone mothers like their US counterparts regain economic independence rather fast. British lone mothers have comparatively long spells of being dependent on income support.

Predicting the treatment of lone mothers by strong male breadwinner countries is virtually impossible on the national as well as on the European level. Britain swung from treating them as workers under the nineteenth century poor law to treating them as mothers under the post-World War II social security system. No lone mother with a child under 16 is obliged to register for work. Table 4 shows the very low labour market participation of lone mothers in Britain. Indeed, Britain is the only EC country where lone mothers have a lower employment rate than mothers in two parent families. The rate of employment is also low in the Netherlands, where all mothers have a low participation rate. France, in line with its view of the worker-mother-citizen, has one of the largest labour force participation rates for lone mothers in the EC (next to Denmark and Luxembourg). Research on the effects of the allocation de parent isole show that it does not act as a work disincentive (Ray 1990). The position in France has most in common with that of Sweden, where as might be expected, 87% of lone mothers are in the labour force. The average standard of living of lone mother families in all countries is lower than the average, but where lone mothers gain a greater proportion of income from the labour market they tend to do better, although social assistance provision in the Netherlands appears particularly generous. In France, they are materially no worse off than single earner two parent families. But lone mothers who are in the workforce tend to work more hours than do men. Thus, despite the relatively high level of material welfare experienced by Swedish and French lone mothers they are particularly time poor. In this regard their position is little different from lone mothers under workfare in the USA. In her study of the strains experienced by Swedish parents, Phyllis Moen (1989) found lone mothers to have the most psychological stress.

The position of lone mothers in these countries demonstrates above all the limitations from women's point of view of the dichotomous designation of 'mother' or 'worker' that is employed by the majority of welfare regimes. As in the case of married women, lone mothers are better off materially and in terms of citizen status in the Swedish model, but they pay the price of being particularly time poor. The rather messier French system, which in the case of lone mothers, as much as in the case of married women recognises them as both citizen workers and mothers, may provide more relief in this regard. It is the generous system of (universal) family benefits in France that serves lone mothers particularly well; France is unusual in that unemployed lone mothers do almost as well materially as those in paid work (Baker 1991). Neither the British nor the Swedish system permits much choice as to whether to engage in paid work, the one prohibits it and the other insists on it. Recent commentators (eg. Lewis 1989) have stressed that given that most lone mother families have once been two parent families and may again become so, their categorical treatment is unwarranted. Problems of access to the labour market, training and to child care are common to all women with children and policies should integrate rather than isolate that experience. That this is particularly problematic in strong male breadwinner countries is demonstrated by the discussion above. But, equally, it is not clear that any policy failing to recognise unpaid work as work can prove satisfactory.

The position of women within different welfare regimes revolves around two related issues, the valuing of unpaid work and the sharing of it. In moving from the male breadwinner to a dual breadwinner model, Sweden or Denmark may be judged to have largely solved the first (because women get compensated at market rates for caring work), but not to have touched the second. One of the original demands of the Swedish Social Democratic Women's League in the 1960s and 1970s was for the six hour day, something that was opposed by the trade union movement and never legislated. Such a measure may well have served to redistribute unpaid and paid work between men and women; as it is, women opt for parental leaves and for three-quarter time work, which has knock-on effects on the degree to which the labour market is sexually segregated. In any case, the Swedish model is unlikely to prove exportable, especially in the context of future EC membership. Unemployment in EC countries is on average four times higher and a much larger proportion of female labour is in precarious employment. In countries where labour market restructuring has proceeded further, the only feasible model to campaign for is probably that of a basic guaranteed income for adults and for children, accompanied by a more active labour market policy (to include training, retraining and job creation).

Some English speaking feminists, disillusioned by the promise of equality in the workplace on men's terms, together with the second class provisions for women as wives and mothers have called for more specific 'family policies', grounded in difference (Hewlett 1986). But this route is likely to secure only a modicum of protection to which the accompaniment is likely to be control in the form of the male breadwinner model. Some pressure for equality in regard to paid employment is also crucial. The challenge is to devise policies that will redistribute and value the increasing amounts of unpaid caring work (as populations age) in order to secure substantive equality.

However, as we have said in the beginning, social policy, if it is more than an expression of an abstract will, is not yet an integral part of the EC integration. The further social policies move from strict market issues, the more they are defined as national, domestic or home "business". Consensus is then, after many, partly vain, efforts, reached on the basis of the smallest common denominator. The male breadwinner model is something that all EC nation states have in common. What can then be hoped for women from the Single Market and the ongoing European integration? And what from the national state and the Super-State?

V. Women's issues in EC Policies - Past and Future

(i) A short history of EC women's policy

The history of EC women's policy is closely linked with that of the Community's social dimension, which developed in three phases (Brewster / Teague 1989: 51; Hörburger 1990). The first stage, from 1957 to 1972, rejected interventionist social policies except in obvious cases of market failure. At the outset, experts did consider whether competition from countries with lower labor standards might justify EC intervention. The debate during this phase between France and West Germany already revealed some fundamental differences in attitudes towards women's paid work and the Community's role in social policy. The French argued that social protection schemes are a part of pay and that indirect labour costs should be harmonized. The Germans, on the other hand, maintained that indirect labour costs were only one factor among many (e.g. taxation systems, productivity, labour relations, or regional location) which determine competitiveness. Nevertheless, France (urged by employers who had traditionally paid social security including family allowances to their workers) succeeded in bringing Article 119 into the Treaty section dealing with social policy. Article 119 provides that

"Each member state shall ... ensure and maintain the application of the principle that men and women should receive equal pay for equal work.

For the purpose of this Article, 'pay' means the ordinary basic or minimum wage or salary and any other consideration, whether in cash or kind, which the worker receives, directly or indirectly, in respect of his employment from his employer."

While concerns about competition rather than women's interests or a broader sense of social justice gave birth to the Article, it has constituted the crucial entering wedge for gender-related social policy in the Community. During the first phase, however, the Community did little to control the implementation of Article 119 by member states.

The second stage of a developing social dimension, between 1973 and 1983, coincided with the rise of new political and social movements, with the ascendance of labor or social liberal governments, and with the enlargement of the EC to include three new member states: Britain, Ireland and Denmark. The Community began to consider worker concerns, such as full and better employment, equal treatment of working men and women, improvement of living and working conditions and workers' participation. In this context, the ECJ for the first time

imaginatively and expansively interpreted Article 119, ruling in favor of one of the three Defrenne cases (see below). In addition, the 1974 EC's first Social Action Programme included a section on women (Hoskyns 1991: 23).

Many social policy directives were drafted during this period. Yet not one significant piece of legislation on issues crucial to women, such as working hours, pro rata social benefits for atypical work (below the normal full-time work week), and better conditions for combining work and family passed the Council of Ministers. West Germany and the United Kingdom rejected the inclusion of equal treatment in social security, arguing that this unduly expanded the meaning of working conditions. Denmark, the Netherlands, and the FRG opposed a requirement to provide a positive right to non-discriminatory practices.

Bowing to this concerted resistance, the Commission retreated to more piecemeal tactics, breaking the memorandum into separate parts. Step by step, five directives were proposed and finally adopted which in detail elaborated the legal and procedural implications of equal pay and equal treatment for national legislators. On the whole, despite failures and sometimes stiff opposition from member states, the 1973-1983 stage was a golden age for women's policies in the Community.

As Scharpf (1992) argues, the goal which justified extensive Court intervention was reached at the end of the second stage. Obvious barriers to free mobility of capital and labour were removed with the start of the Single Market. Further legal intervention that transcended the narrow frame of strictly market-related concerns would replace national proceedings and thus constituted a more fundamental attack on national identities and properties. In this context, resistance increased. In 1983, the Commission proposed a Directive on parental leave for family reasons. It consistently failed to pass the Council. On top of that, in 1984 the ECJ claimed that "it was not the job of the Court to settle questions concerned with the organization of the family or to alter the division of responsibility between the parents"¹⁶.

These two incidents indicate the passage from the second to the third stage, 1983-1991. This stage roughly corresponds to the move towards the Single Market laid down in the Single European Act (SEA), as well as to Jacques Delors' Commission presidency and his "politics of social dialogue." Delors favored an emphasis on agreements and negotiations of the main political actors. Social policy initiatives were to be worked out by employers and trade unions. Delors' approach clearly indicated the policy shift of the third phase, a withdrawal from the monolithic harmonization approach and a move towards "lowest common denominator" policy principles and consensual common standards, with implementation left to the member states.

This growing caution was encouraged by British insistence on a "hands-off" approach that limited Community policy to a very narrow set of social policy issues, including the rights of women, children and the handicapped, with respect to employment (Lange 1992: 230). Lange convincingly claims that under conditions requiring a unanimous vote, the predictability of a British veto became "a screen behind which the other member states could avoid responsibility for not doing what they did not want to do (246)." Relying on Britain's veto, member states

16 *Hoffmann v Barmer Ersatzkasse* 1984.

practiced 'cheap talk'. They could offer substantial rhetorical support for expanded Community social standards without having to come to terms with the complex structure of interests that would affect the implementation process (ibid.: 244).

In the past few years, however, the cards have been reshuffled. Thatcher's fall in 1990 and the 1991 Maastricht summit have created a new potential for EC social interventionism, while the opportunities for cheap talk have diminished. Increasingly, member states are forced to explicate their interests. Priorities have changed. The Social Fund no longer designates women as a specially important category for training. Seemingly, during the fourth and ongoing stage of neopluralist and highly fragmented interest policies only high consensus directives will be successful (ibid.: 256). In this context, after some log-rolling and a long and rough process of issue modification the 'Maternity' Directive became law in October 1992 (see below). On the other hand, more contentious activities derived from the Commission's Action Programme drawn up to implement the provisions of the Social Charter (e.g. draft directives on atypical work or on proof of work contracts) continue to be rebuffed by member states.

Taking stock: in the past two decades the Community has adopted five equality directives and one on pregnant women's health and safety, although many proposals were either watered-down or rejected¹⁷. A closer look at successes and failures reveals that most of the fiercely disputed, modified or rejected proposals questioned the gender divisions of labor in member states and their impact on women's socioeconomic and political status. In the following section, we examine the scope and implications of Article 119 and the corresponding directives. Despite limitations, legal interpretations of Article 119 have had profound effects on the scope of Community intervention in member state social policy.

(ii) Legal basis, applicability and enforcability of Article 119

In 1968, two Belgian women lawyers brought the Gabrielle Defrenne case before the ECJ against the advice of both, the Belgian trade unions and Commission officials (Hoskyns 1991: 23). Sabena, the Belgian airline, expected air hostesses older than forty to change jobs within the company and thereby accept a loss of income. This rule did not apply to cabin stewards who did the same job and with whom Defrenne compared herself. The ECJ ruled that there was discrimination and Sabena had to compensate Defrenne's loss of income. The case established direct enforcability of Article 119¹⁸. At that time, however, the lower pension which Gabrielle

17 After the Council's intervention the following draft directives were changed into the weaker form of recommendations and announcements (Schunter-Kleemann 1992a: 43): Women's Unemployment (1984), Equal Treatment in Taxation, Family Policies, Childcare, and Sexual Harassment at the Workplace. The Council rejected the following proposed directives: Part-time Work (1983), Parental Leave (1984), Social Security; Widow(er)s' Pensions; Additional Benefits for Families; Age of Retirement (1989), (Reversal of) Burden of Proof (1989), Organization of Working Time (1991), Atypical Employment (1991).

18 Article 119 is part of the EC's *primary legislation*, an immediate part of the Treaty, whereas regulations and directives constitute the *secondary legislation*. The stipulation of the latter must be justified as 'means to a goal' by reference to the Treaty. Aimed at clarifying the content of Article 119, the Equal Pay Directive (75/117/EEC) fell under Article 100, which allows directives for the

Defrenne was to get as a consequence of Sabena's practice was beyond the scope of Article 119¹⁹.

Through the Treaty member states have surrendered some of their sovereignty to the Community. Treaty provisions have direct effect and take precedence over domestic law of member states in conflicting cases (Shapiro 1992: 126). This, in turn, authorizes the Commission and the Court to review national legal practices with regard to Treaty clauses. Generally, supranational legislation cannot be relied upon directly by individual citizens within a national court. Yet, in Defrenne and similar cases the European Court of Justice has held that Article 119 is directly enforceable and gives such a right to an individual provided that remedies, like the British Equal Pay Act, do not exist under national law (Morris / Nott 1991: 109). Those remedies, however, only exist in some member states and they do not cover all possible discriminatory practices²⁰. Certain aspects and cases of pay discrimination "are caught by the more general wording of the Treaty" -- a limitation that is of more than academic importance (ibid).

Until the mid-seventies, however, the European Court interpreted Article 119 very narrowly as equal pay for the same work. It refused to deal with equal value claims and excluded indirect discrimination and social security matters (Hörburger 1990: 26). Meanwhile, about 47 equal treatment claims have been brought before the European Court, 44 in the period 1980-90. And the Commission has acted upon 12 infringement cases against member states (Hoskyns 1991: 25). Actually, Article 119 only applies directly to forms of overt discrimination that can be easily identified with sole reference to the wording of the article -- that is to say, without additional national and supranational measures to define criteria of equal work and equal pay. Consequently, doubts were expressed as to whether the Article applies to equal pay for equal work, or only to equal pay for the same work, since "equal value" claims require the development of criteria for assessing what is of equal value (Morris / Nott 1991: 112). Further uncertainty concerned the kind and scope of fringe benefits included in the meaning of "pay"

approximation of member-state legal acts that directly affect the establishment or functioning of the common market (Shapiro 1992: 146). Directives are binding as to the result to be achieved while they leave a choice of form and methods to the member state. Overt pay discrimination, however, distorts competition and therefore falls under direct application of EC law.

19 The following four Equality Directives were issued with reference to Article 235 EEC, which regulates "unforeseen cases." It holds that "acting unanimously on a Commission proposal and after consulting the Parliament" the Council may take appropriate measures to attain one of the Community's objectives when the Treaty has not provided necessary powers. Colneric (1988: 968) maintains that the obvious change of the legal basis from Article 100 to Article 235 indicates a weakened significance of equality issues. According to Shapiro (1992: 145) the Court has interpreted Article 235 narrowly "as providing only for the creation of particular instruments or devices that were not specifically provided for in the treaties." Furthermore, Community action is rarely justified by reference to Article 235 alone but usually by reference to explicit Treaty goals and as an appropriate means to this goal. In contrast, Raasch (1990: 65) claims that by referring to Article 235 the Court and EC social policy have moved away from a strictly employment related workers' rights towards a broader understanding of the social dimension.

20 Germany lacks such a remedy. In order to save time and energy and to promote an optimal outcome, sympathetic judges at local courts prefer to apply directly to the European Court (Raasch 1990: 68) and to bypass German federalism's own multi-tier route.

and the standard to which to adjust. These ambiguities have only been gradually treated through a combination of Council action and ECJ adjudication.

(iii) Substance and scope of Equal Pay and Equal Treatment Directives

In 1975, the International Women's Year, backed by "priority actions" in the Social Action Programme, the Council approved Directive 75/117. This 'Equal Pay' Directive reacted to some member states' reluctance or refusal to interpret Article 119 purposively. Article 1 of the Directive clarifies and extends the meaning of equal pay as meaning

"... for the same work or for work to which equal value is attributed, the elimination of all discrimination on grounds of sex with regard to all aspects and conditions of remuneration. In particular, where a job classification system is used for determining pay, it must be based on the same criteria for both men and women and so drawn up as to exclude any discrimination on grounds of sex."

Article 2 provides that member states should introduce measures which enforce procedures for individual complaints (Byre 1988: 21; Corcoran 1988). The concept of equal value has allowed "for broader comparisons across jobs", at least in areas where both women and men are employed by the same employer (Byre 1988: 22). In 1986, in *Rummler v Dato-Druck*, the ECJ decided that member states had to develop criteria for job classification schemes built on average standards of performance of both sexes (Colneric 1988: 970).

Neither Article 119 nor the Equal Pay Directive mentions different forms of discrimination. The ECJ, however, decided that Article 119 applies to indirect discrimination. While direct discrimination concerns different treatment of two equally-situated individuals, indirect forms refer to gendered practices generating different outcomes for different groups. Two questions guide the identification of indirect discrimination (Colneric 1988: 971): (1) *Is the proportion of those disadvantaged by a certain practice significantly higher than that of those who profit?* (2) *Is the discriminatory measure an effective means to a justifiable goal?*

Bilka, a German department store, excluded part-time employees, mainly women, from its pension scheme. The Court maintained that wage policies which disadvantage part-timers are justified as a measure to keep part-time work low, as long as the enterprise can prove that this measure answers a real need and that the chosen means properly serves the need. *Bilka* failed to prove its case.²¹

The *Bilka* case is important with respect to the extended meaning of discrimination as well as the definition of "pay" in European law. This broad scope allowed the Court to outlaw the exclusion of women from pension contributions paid by the employer or from benefits like travel facilities granted to retired railway employees (Brewster / Teague 1989: 170; Morris / Nott 1991: 114)²².

Employees who worked less than ten hours a week for FWW²³, a commercial cleaning company, could not claim statutory sick pay. The statutory exclusion mainly affected women. The ECJ held that this indirectly discriminated against women and therefore contradicted

21 *Bilka v Weber von Hartz* 1987.

22 *Worringham and Humphries v Lloyds Bank* 1981. *Garland v British Railways Engineering* 1982.

23 *Rinner-Kühn v FWW Spezial-Gebäudereinigung* 1989.

Article 119, "unless the discriminatory impact the hours requirement had on women" could be objectively justified. It continued that the member state and not the particular employer has to vindicate the practice "on the basis of objective gender-neutral factors, rather than generalized statements" (Morris / Nott 1991: 116). By interpreting 'pay' extensively and deciding that the statutory exclusion of part-timers from pension and sick pay schemes was indirectly discriminating against women, the Court also extended the scope of 'work'.

Obviously, Article 119 and the Equal Pay Directive do not eradicate discrimination, but they do oblige members states to offer detailed justifications for discriminatory measures. The Treaty and the four subsequent Equal Treatment Directives allow legitimate reasons for discrimination, such as the protection of local health, safety, morals, or welfare through member state regulation. The Court operates a multi-dimensional test in cases of discrimination by first discerning the intent of the discriminating party, second, by using a "balancing standard" which consists of a "minimum-means" or "proportionality" test (Shapiro 1992: 130)²⁴. In other words, the Court examines whether a proved legitimate "local" goal (e.g. a real need of an employer) is achieved by those means that are least destructive to the goals of the Treaty and Article 119. Yet, Morris and Nott (1991: 196) conclude rightly that permitting the employer to "justify" discriminatory practices has narrowed the scope of Equal Treatment legislation for women. Even an objective testing procedure will allow market forces, by national legislators more generally couched in terms of financing problems, "to override the social good of equality." But it is proper to stress the potential effects of ECJ decisions under Article 119 and the Equal Pay Directive. Employers cannot simply persuade one male to accept a lower "female" wage for a job in order to keep wages low; instead, they have to carefully examine the existing statistical effects of their pay structures and to be ready to justify their adverse impact on women.

"Good reasons" and "minimum-means" rules pertain especially to the subsequent four Equal Treatment Directives, which cover a wide range of sex discrimination with regard to work. While issued with reference to the general Community goal of improving and equalizing employees' living and working conditions, they expressly allow for different treatment on grounds of good reasons and exclude crucial provisions from applicability. And, since the Equal Treatment Directives do not immediately relate to Article 119 and are of much wider scope than equal pay, neither the ECJ nor member states have yet accepted direct applicability of the Directives.

As regards night work, the Court has refused to accept "good reasons", such as women's family responsibilities, for unequal treatment. This principle has become even more obvious in claims on the basis of the subsequent Directives which eventually call for equal treatment in matters of social security in statutory (Directive 79/7) and contractual schemes (86/378). In July 1991,

24 Shapiro refers to free movement of goods within the Community, to relations among member states and between justifiable local and supranational interests. The relevant Article 36 EEC justifies prohibitions and restrictions on imports "on grounds of public morality, public policy or public security; the protection of health and life of humans, animals and plants; the protection of national treasures; or the protection of industrial and commercial property." We argue that some of these justifiable reasons as well as similar principles for justification can be found in social policy matters.

referring to the Equal Treatment Directive, the ECJ outlawed the French *Code du travail's* article prohibiting night work by women. The Court argued that night work is equally harmful to men and women and that different treatment was an unjustified distortion of competition. It further argued that Directive 76/207 does not pertain to the domestic division of labor between parents (Raasch 1992: 428).

(iv) The Social Security Directives

As mentioned above, both Social Security Directives were originally part of the Equal Treatment Directive. The diversity of social security regimes and the problems of implementation at the member state level made this a tricky subject. As a result, enactment of social security measures was delayed and the complex provisions were eventually divided into two directives. Additionally, the member states were given six years to phase in adoption of the directives (1978-1984) (Luckhaus 1990: 13).

Directive (79/7) aims at the gradual realization of equal treatment in social security matters. The Directive clearly restricts equal treatment to those within work or some kind of work-relationship (e.g., the involuntarily unemployed, pensioners). The formula does not distinguish between full-time and part-time work, enabling the ECJ to expand the meaning of "working population" as it did in *Bilka and Rinner-Kühn*. Scheiwe (1992) and Luckhaus (1990: 15) note that the directive is still restrictive, since the non-employed and the unpaid worker remain excluded.

Article 3 (1) enumerates incidents covered by the Directive: statutory schemes that protect against sickness, invalidity, old age, accidents at work and occupational diseases, as well as unemployment. Survivor's pensions and family benefits which do not supplement risks mentioned in 3(1) are expressly exempted from the scope of application. According to Article 4, equal treatment outlaws any discrimination whatsoever on the grounds of sex either directly, or indirectly, by reference, in particular, to marital or family status in relation to scope of the schemes, conditions of access and calculation of benefits. Paragraph 2 states that maternity benefits do not contradict the content of equal treatment. The Occupational Social Security Directive (86/378) extends equal treatment of men and women to schemes not regulated by the previous 1979 Directive.

Both Social Security Directives seem to take an ambiguous stance on the issue of equalizing pensionable and retirement ages. Norms like the expectation that male breadwinners will often marry a younger wife have traditionally justified differences in pensionable ages. Article 7(a) of Directive 79/7 explicitly excludes pensionable ages from its application. Consequently, in *Burton*²⁵ the ECJ rule that treating men and women differently in relation to pensionable ages does not contravene Treaty law. However, the Directives have had some impact on retirement ages. Traditionally, women could be forced (or have the right) to retire earlier than men; men must (or are allowed to) work more years than women. Since member states run early

25 *Arthur Burton v British Railways Board* 1982.

retirement schemes, in reality mainly for men, this practice seems to be insufficiently justified. In *Marshall* the Court maintained that Article 7(a) of Directive 79/7 had to be narrowly interpreted (Colneric 1988: 974). Compulsory retirement for women is unjustified and contradicts the principle of equal treatment²⁶.

"The Barber case highlights both the scope and the "topsy-turvy" impact of the gender-neutral application of the Directive. Mr. Barber was made redundant at the age of fifty-two. Although in an occupational pension scheme, partly a contracted-out state scheme, he was denied the immediate pension available to female employees and only received a lump sum payment. The ECJ ruled that this contradicted Article 119, since pensions constituted pay, and that whatsoever occupational pensions schemes are within its scope" (Morris / Nott 1991: 115; 155)²⁷.

Different retirement ages for women and men have been fiercely debated since then. As Morris and Nott argue, it is uncertain whether and how women profit from the Barber decision, and, in general, from the implications of the Social Security Directive. Where women had previously been preferentially treated, they now had to accept same conditions (e.g., to work longer before becoming entitled to pension benefits). In the long run, widow's pensions may come under attack unless "good reasons" can be advanced for these programs. Although Article 117 explicitly states that living and working conditions have to be adjusted "by progress," the Equal Treatment Directives may produce some lowest common denominator adjustments, as has happened in cases of former preferential treatment of male employees²⁸. In countries traditionally biased towards male wage-earners, a levelling down of benefits may take place under the principle of equal treatment (Sjerps 1988: 101). Some member states are already using the deregulatory possibilities in equal treatment doctrine to restructure welfare.

The politics of "equalization" has achieved notable but still limited gains for women. Women's access to male jobs and careers is still restricted. Women have lower pay, less secure jobs, and work shorter hours. This, in turn, indirectly strengthens men's roles as breadwinners. Focusing on the United Kingdom Morris and Nott argue that the British Equal Pay and Sex Discrimination legislation -- to a significant extent a response to Article 119 and the Equality Directives -- has indeed ensured "that all may, theoretically, enter the race, but (have done) nothing to recognise the handicaps carried by some entrants, some of which may be so severe as to prevent them reaching the starting line (1991: 194)."

26 *Marshall v Southampton and South-West Hampshire Area Health Authority* 1986. As a result of the ECJ ruling, British women have been given the choice between retiring at sixty or remaining in employment as long as men are expected to work (Morris / Nott 1991: 157).

27 *Barber v Guardian Royal Exchange Assurance Group* 1983, 1990. Since Barber was about a contracted-out state scheme (SERPS, State Earnings Related Pension Scheme), some argue that the category of pay was inappropriately applied (Clever 1992).

28 Some German employers granted male employees a "wife benefit" (Ehefrauenzulage), while women could not claim a "husband benefit." When the case went to court (Arbeitsgericht Berlin), some expected that the benefit was extended to include women workers. Instead, the court first maintained that there was unjustified discrimination, and then argued that payments granted with reference to sex and marital status contravene the law and have to be abolished (Colneric 1988: 969). Sjerps (1988: 101) lucidly elaborates the possible impact of a "politics of equalization" for women in the Netherlands. The revision of the tax system under the principle of equal treatment was costly for married women, who still make up the majority of women in Dutch society while "the traditional breadwinner underwent a considerable improvement."

(v) Barriers to implementation

Article 119 and the Directives create a potential open to women-friendly interpretation. By exhausting this potential, the European Court of Justice and some judges within member states have both created opportunities for women and revealed the pitfalls and limits for further progress. The next section considers the principles behind EC law which have weakened its ability to get to the roots of the handicaps which prevent women from reaching the starting line or staying within the market on equal terms.

Some Europeans less familiar with the liberal tradition studying the substance of the Directives and the various ECJ decisions might be puzzled by the straightforward conjunction of two principles, liberty and equality. Creating a Common Market, an area with limited barriers to possible activities and choices, "the Ritz open to all", has helped egalitarian liberalism to flourish. Ideally, liberty implies that dependency exists only by choice and as a result of free individuals' interacting, since nobody dictates choices. Participants in the market sphere, in our case, in the Common Market, are essentially independent agents who freely enter contracts. Direct discrimination in this context equals coercion. It means obstructing a person's choice by other people's direct intervention, eg. by forcing women to accept lower wages or poorer social security because they are women or wives. Article 119 and the first Directive on Equal Pay directly respond to this. They guarantee the *formal* conditions of freedom (no coercion). Theoretically, market-contracts constitute mutual dependencies of both parties.

Since most employees lack the resources the employer has, however, they enter an asymmetrical relationship. The cases presented in the previous section demonstrate that the Court has, on occasion felt obliged to establish and monitor "conditions which reduce one-sided power within the formal freedom relationships of asymmetric contracts" (Tugendhat 1992: 359). Some persons lack choice because they lack the capacity and the opportunity to choose. If a person is sick or otherwise seriously handicapped, she faces such constricted options that the concept of choice is rendered almost meaningless. As a worker, the handicapped person would be caught in a state of exploitable dependency incapable of acting - withdrawing or remaining - without severe costs (Goodin 1988: 173). Therefore, the ideal of liberty merges with that of a democratic society. The second ideal promotes "individual agency and responsibility as the basis for political and legal rights" (Forbes 1988, p.18). It also includes fair taxation or public provision of a social minimum. Social policies aimed at eliminating exploitable dependencies within the market by providing for *average* workers' risks, like sickness or old age, are justified because they provide a basis for the exercise of meaningful choice.

"Average" alludes to being "similarly situated" within the market. For proponents of liberal equality, providing for pregnant women raises a problem, because no male comparison exists.²⁹ The Directive on the protection of pregnant women at work was stalled by conflicts over equal

29 Equal treatment which results from constitutional equal rights has always meant adjusting women to an already existing standard, the male one. "Discrimination" presupposes a subject of comparison with a better standard. Raasch (1992: 431) argues that a consequent application of the principle of non-discrimination would eventually require comprehensive redistributive policy.

versus special treatment (for the US: Bacchi 1991). Finally a watered-down version of the Commission's proposal became law in October 1992. The wording of the directive, which seeks "to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding" reflects the remedy which was found. Pregnancy and maternity were dealt with as matters concerning working conditions and equated with sickness. Drafted as a health and safety issue, the problem of "similarly situated comparators" disappeared (CREW 1992: 5)³⁰. Crucially, the "health and safety" rubric allowed the proposal to be decided mainly with reference to Article 118a, which permits qualified majority voting³¹.

The problem of indirect discrimination has raised complex problems for European policymakers. Some people have little alternative 'but to do x', although nobody exists who directly demands x. Nobody forces women to take part-time jobs with lower career prospects and poorer social security. By including *indirect* forms of discrimination, the Equal Treatment Directives began to consider the difference between obstruction by other people and the lack of means (Tugendhat 1992: 357). These directives allow for positive action programs to assist "those who start the race with differing and/or unequal abilities" (Forbes 1991: 18). So far, however, these positive efforts have been limited, and the Community lacks both the fiscal resources and political inclination to provide meaningful support.

In general, EC officials are reluctant to intervene in social circumstances that may currently undermine the market position of women. Preferences are said to originate in individual peculiarities and are, therefore, beyond public scrutiny. The European Court has strictly maintained this view and carefully abstained from intervening into the private domestic sphere and its impact on women's choices. Seemingly, the gender division of labor within the household is treated as a matter of free choice made by the couple in privacy. As Scheiwe (1992) observes, this does not amount to saying that the family is always beyond the Court's reach - the migrant worker's family obviously is not. Yet, the family is acknowledged solely as a market participant's non-market appendage (e.g. as a possible obstacle to mobility) and not as a family *per se*.

EC policy applies to working or actively work-seeking women who are (or should be) similarly situated with working men. In other words, it covers employment-related heads of household. As a matter of fact, the ECJ has clearly expressed in *Achterberg*³² and other cases that Article 119 refers to equal treatment of the working population, not to general conditions for equality.

30 Naturally, the equation of pregnancy with sickness caused some outcry. Yet, while prohibiting "any reduction in levels of protection already achieved" (Article 118a (2)), the Directive clause stating that the right should not be conditional on having worked for a period in excess of 12 months prior to giving birth will considerably improve the situation of women in Portugal, Ireland and the United Kingdom. Unsurprisingly, the UK consistently opposed the proposal and abstained during the final vote. Italy had previously vetoed the proposal, calling instead for the better Italian provision of a leave paid at 80% of the previous salary. It also abstained on the final vote (CREW 1992: 4).

31 The Article states that the Council shall adopt, by means of directives, minimum requirements for encouraging improvements, especially in the working environment, to protect the safety and health of workers.

32 *Achterberg-Case and joint cases 48, 106, 107/88 (1989) ECR 1963.*

This makes the definition of the working population critical³³. The *Bilka* and *Rinner-Kühn* case expose the Court's intent to cover all sorts of paid work. However, proposals on "voluntary part-time work" (later changed into a draft directive on "atypical work") aimed at improving standards conflicted with the diversity of member state standards and have consistently been rejected. Thresholds defining who counts as a worker (and, therefore, is also entitled to some social security) vary significantly between the average 15 hours per week (Germany), the maximum of 25 hours (Belgium) and the minimum of eight hours (Britain and the Netherlands). The European Parliament proposed a rather low threshold of twelve hours a week (Hakim 1990: 24). Since thresholds can easily be justified with reference to problems of how to finance social security, the Court can do little more than ask for good reasons and minimum means.

The Court has never departed from defining work solely as paid work³⁴. The *Johnson* case clearly demonstrates both the Court's definition of what counts as work in the context of the Treaty and the implications for those engaged in unpaid caring³⁵.

"In *Johnson*, a woman had interrupted work to take care of her child. Later on, the mother was incapable of reentering employment because of a severe disability. The British Adjudication Officer rejected her claim for a disability benefit by arguing that she had voluntarily left work. The ECJ held that the Social Security Directive applies to the working population and to those actively seeking work and that Mrs Johnson did not belong to either category when claiming the benefit" (Scheiwe 1992: 12).

EC policy clearly excludes from its scope both those who have never worked in the paid labor market and those who had worked for many years but gave up employment to have children³⁶. On the other hand, the British and German practice of requiring mothers "when claiming benefits to specify the arrangements they have made for child care if they were to get a job" (Abbott / Wallace 1992: 121) obviously contradicts equal treatment. The Directive 79/7 also covers the search for work, and outlaws any direct or indirect discrimination by reference to sex, marital and family status.

The Maternity Directive has also focused on the employment nexus, masking women's concerns as gender-neutral health and safety issues. On the face of it, it corresponds to principles of equal treatment. The policy process produced something slightly more than a "lowest common

33 While partly arriving at different conclusions, the following owes a lot Kirsten Scheiwe's (1992) detailed analysis.

34 On the face of it, the *Drake* case suggests the opposite (Scheiwe 1992: 11; Luckhaus 1990: 15). *Drake v The Adjudication Officer 150/85 (1986)*. The case was brought before the Court in the course of a campaign in the United Kingdom. The Child Poverty Action Group successfully claimed that excluding married women from the Invalid Care Allowance violated the Social Security Directive (Hoskyns 1991: 27). Not even implicitly, however, does the Court decision refer to unpaid caring.

35 *Johnson v The Adjudication Officer (1991)*.

36 Scheiwe equates the German child rearing legislation which attaches some value to unpaid caring, eg. by allocating pensions rights for three years of caring (per child born after 1992), with statutory social security schemes. In her view, Germany has become vanguard of recognizing unpaid caring as comparable work. In fact, the child rearing benefit is mainly an incentive for the parent to retreat from work for some time or to work part-time. Parents not gainfully employed can claim the benefit. Yet, in sharp contrast to family benefits, it excludes parents who can neither afford nor want to give up or reduce paid work (see also Steinmeyer 1992: 187). In addition, the legislation has proved to severely hinder women's access to employment on equal terms (Schulz / Kirner 1992).

denominator" outcome. The Directive not only sets some crucial minima at the lower end of the existing regulatory spectrum (eg. at least 14 weeks of leave; benefits at least equal to those for sick pay). By demanding that already existing better standards be maintained, it also accepts the diversity of "maternity" regimes, including more generous ones. The directive therefore avoids both harmonization around an identical standard and the possible prospect of a "race to the bottom" (see also Shapiro 1992: 134).

Other issues related to the need for unpaid caring have received only intermittent attention and produced little beyond symbolic action. Moss (1990: 30) maintains that because of its commitment to equal treatment for working men and women the "EC has a longstanding interest in childcare" going back to the 1974 Social Action Programme. It acknowledges that equal opportunities for women require changes in employment patterns, an increase in childcare facilities, and a willingness on the part of men to share family responsibilities more equally. Yet substantive steps have been limited. In the course of the First and Second Equal Opportunities Programmes, the Commission has been active in proposing the Directive on Parental Leave and Leave for Family Reasons (that later failed, vetoed by the UK) and in establishing the European Childcare Network³⁷. The passage of the Social Charter in December 1989 and the Action Programme of 1989 aimed at its implementation, prompted the Commission to prepare a Draft Recommendation on Childcare. However, since a recommendation is not binding at all, it is little more than "cheap talk." A revised Parental Leave Directive or a Framework Directive on Childcare, as suggested by the Network, are not in the pipeline. The chances of the latter passing the Council - even assuming Commission support - are small. The various national regimes of formal (paid) and informal (unpaid) care for the elderly, have attracted even less attention, although many women interrupt or reduce employment in order to care for an elderly parent (Jamieson 1990; 1992). As a rule, the Community and the Court have left the issue of whether and how to provide for those not actively seeking work or performing unpaid work to member states' authority and preferences.

In summary, as things stand, the prospects within the EC are not entirely promising for women. European policies have emphasized economic or civil rights of independent individuals. As in the various nation states, independence is defined via continuous employment and/or an independent and continuous income above the poverty level. Policies after 1992 will stress the mobility of workers who are defined independent in this sense. Elizabeth Meehan (1991) has suggested that the enthusiasm for 'sexual equality' manifested in the Community's equal treatment directives of the 1970s came largely from the idea that such measures would provide a relatively cheap 'human face' for the EC. Enthusiasm waned during the 1980s when the limits of the individually based equal rights legislation became clearer and when some member states began to voice alarm at the cost of more substantive directives, such as equal pay for work of equal value.

37 Established in 1986 and consisting of a national expert from each member state and a co-ordinator, the Network prepared reports on childcare policies and services in the European Community. More recently, it has focused on the use of the Structural Funds for the development of childcare, especially, in the EC's poorer regions (Moss, *ibid.*).

VI. What Can be Hoped for From the State and the Super-State?

Many English speaking feminist policy analysts have remained at best ambivalent as to their expectations of the state. Jean Bethke Elshtain (1981) condemns public life as being undemocratic and dominated by monopoly and bureaucracy. She believes that any further attempt by women to identify with the public order as currently constituted would mean the suppression of traditional female worlds, and she therefore defends the idea of the separation between the public political and the private domestic. This perspective celebrates and seeks to protect difference and has little sympathy with measures that seek to promote equality by treating women and men the same. It supports the strong male breadwinner model. Pateman (1988; 1989) has argued for the integration of the private world into the political so that public and private remain distinct, but are not set up as separate and in opposition to one another. This is a more promising position because it permits an issue such as unpaid work to enter the political agenda, which it must if any fundamental change in the position and welfare of women is to be achieved.

In terms of state welfare, while recognising that the outcomes of welfare policies have changed familial and other structures in society such that male power has been challenged, it may still be argued that state policies have also served to perpetuate patriarchal structures (Pateman 1988). At best these writers have reached some agreement that state patriarchy constitutes patriarchy at a remove (for example for lone mothers) and may thus be preferable to dependence on men (Oakley 1986). In contrast, the Scandinavian literature on women and the state have grown increasingly optimistic about the possibility of a woman-friendly state (Hernes 1987). This is in part a product of the nature of policies developed in Scandinavian countries and in part is due to the rapid increase in women's formal political representation. All Nordic Parliaments with the exception of Iceland have reached a critical mass (30-40%) of women members; until the recent election 38% of Swedish Parliamentary representatives were women (the figure is now closer to 28%) and eight of 22 government ministers. Thus while women did not make the decisions that reorganised the way they use their time and gain the right to social entitlements in Sweden any more than in any other twentieth century welfare state, the Swedish case may lend support to Laura Balbo's (1987) argument that modern welfare states call forth greater female public participation. In terms of the future debates about European welfare regimes, the extent to which women share political power will be crucial. In this respect, Scandinavian women may be in a better position to negotiate the changes that will accompany the implementation of the Single European Act than women in most other EC countries. Empowerment was the major goal of turn of the century British social activists, but it gave way to simple material well-being in the post-war welfare state. Arguably, the achievement of gender equality depends on both.

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Appendix

Table 1: Female Activity Rates by Age and Marital Status, 1985 (%)

	Single		Married		Widow/Divorced	
	25-49	50-64	25-49	50-64	25-49	50-64
FR Germany	87	57	55	30	82	33
France	88	57	66	35	87	39
Netherlands	84	46	42	17	49	18
UK	84	48	66	46	72	37

Source: EC, Lone Parent Families in the European Community. Final Report, London, Family Policy Studies Centre, 1989: 19.

Table 2a: All Mothers (1) with Children Aged 0-4 by Labour Force Status, 1985 (%)

	In Labour Force			Out of Labour Force
	Employed Full Time	Employed Part Time (2)	Unemployed	
FR Germany	16	16	7	61
France	38	12	9	41
Netherlands	4	17	4	75
UK	8	21	11	61

Notes:

1. Excluding those who and those whose spouses live in the households of others.
2. As defined by respondents.
3. Those who, in the week before the survey (by Eurostaat), were actively seeking work.

Source: As per Table 1, p. 22

Table 2b: Participation Rates by Population of Working Age (15-64) (%)

	Denmark ³⁸	France	Germany	U.K.
1980			(1982)	
Participation Rate				
Total	81,0	68,8	68,0	74,4
Male	89,0	81,7	84,8	90,5
Female	70,0	54,5	51,8	58,3
Part-time-employed ³⁹				
Total	23,2			
Male				
Female				19,1
1886				(1987)
Participation Rate				
Total	82,5	65,7	68,2	74,9
Male	88,4	76,8	83,0	87,3
Female	76,5	55,3	53,4	62,4
Part-time-employed				
Total	23,7	11,9		22,0
Male				5,1
Female				44,7
1988/89	(1988)	(1989)	(1988)	(1989)
Participation Rate				
Total	84,4	65,5	68,9	76,1
Male	90,3	75,1	82,8	86,8
Female	78,3	65,2	54,8	64,4
Part-time-employed				
Total	23,7	11,9		21,8
Male				5,0
Female			21,3	43,8

Source: OECD Economic Surveys. Paris 1991; Vol. Denmark (107), France (139), Germany (173) and United Kingdom (125).

Kirner/Schulz 1991 (67).

³⁸ per cent by complete population

³⁹ per cent of total employment

Table 3: Percentage Children in Publicly funded Services, 1985 or 1986

	0-2 years	3-5 years
FR Germany	3	60
France	20-25	95
Netherlands	1-2	50 (3-4 Years)
UK	2	44

Source: Angela Phillips and Peter Moss, *Who cares for Europe's Children? The Short Report of the European Childcare Network, EC, 1988, Appendix 1, Table 2.*

Table 4: Lone Mothers (1) with Child Aged 0-4 by Labour Force Status, 1985

	In Labour Force			Out of Labour Force
	Employed Full Time	Employed Part Time (2)	Unemployed	
FR Germany	27	14	14	45
France	44	8	21	27
Netherlands	10	74		
UK	7	10	14	69

Notes:

1. Lone mothers who live in households of others are excluded. Those who are cohabiting or who have temporarily absent spouse may be included.

2. and 3. See notes above for Table 2.

Source: As per Table 1, p. 21.

Table 5: Female Activity Rates in FR Germany by Marital Status and Age, 1988

	25-35	35-45	45-55
Single	75,4%	77,7%	69,9%
Married	48,7%	53,1%	48,4%
widow	49,0%	58,9%	53,9%
divorced	66,2%	77,6%	73,6%

Source: Mikrozensus, April 1988.

Table 6: Percentage Children in Publicly funded Services, 1988

	0-2 years	3-5 years
FR Germany	3%	60%
Danemark	44%	87%
France	20-25%	95%
UK	2%	44%
Netherlands	10-11%	75%

Source: Schunter-Kleemann 1990: 168/169.

Table 7: Female Activity Rates by labour force status

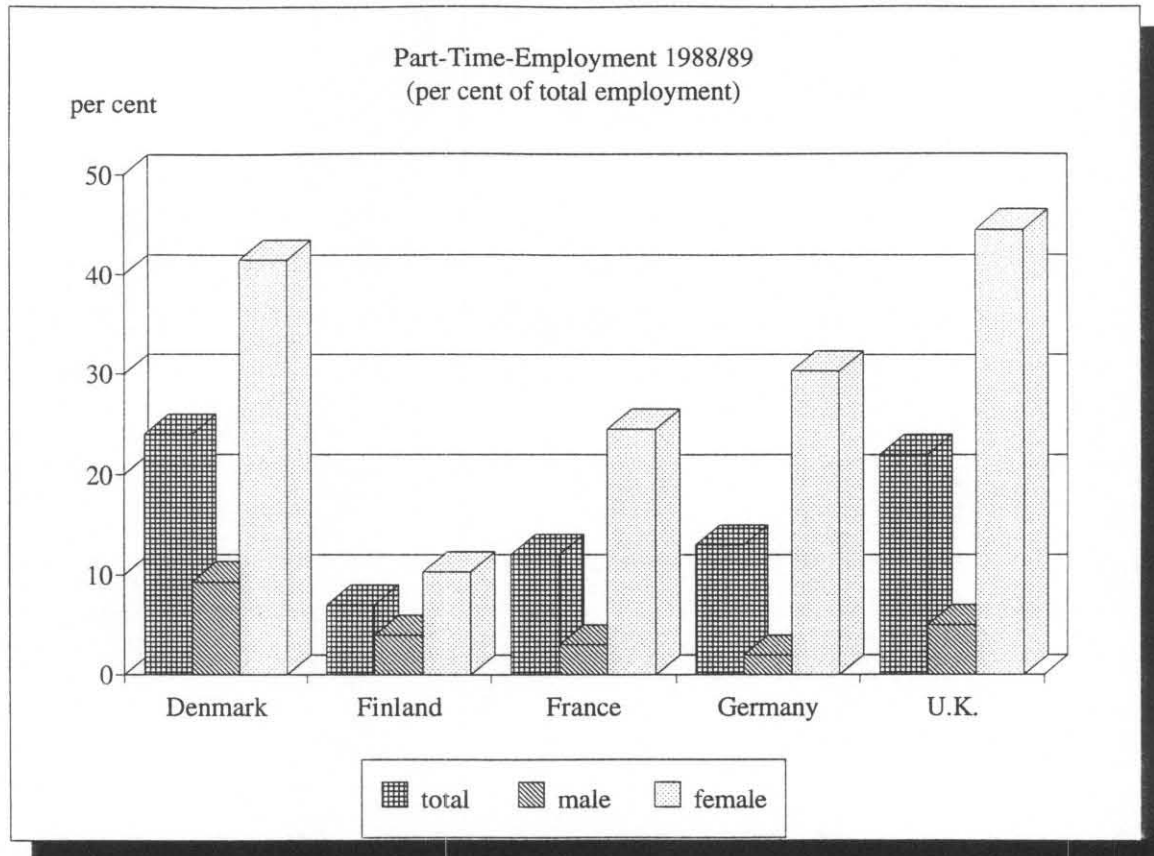
	Unemployed (1)	Employed Full Time (2)	Employed Part time (3)
France	13,0%	55,7%	11,8%
Netherlands	12,8%	41,9%	25,3%
UK	8,5%	62,6%	21,6%
FR Germany	8,3%	51,9%	12,9%
Danemark	7,9%	75,9%	23,7%
Sweden		79,4%	25,2 %

Source: (1) Eurostat, Arbeitslosigkeit, 8/1988 und Regionen 2/1988.

(2) 1987

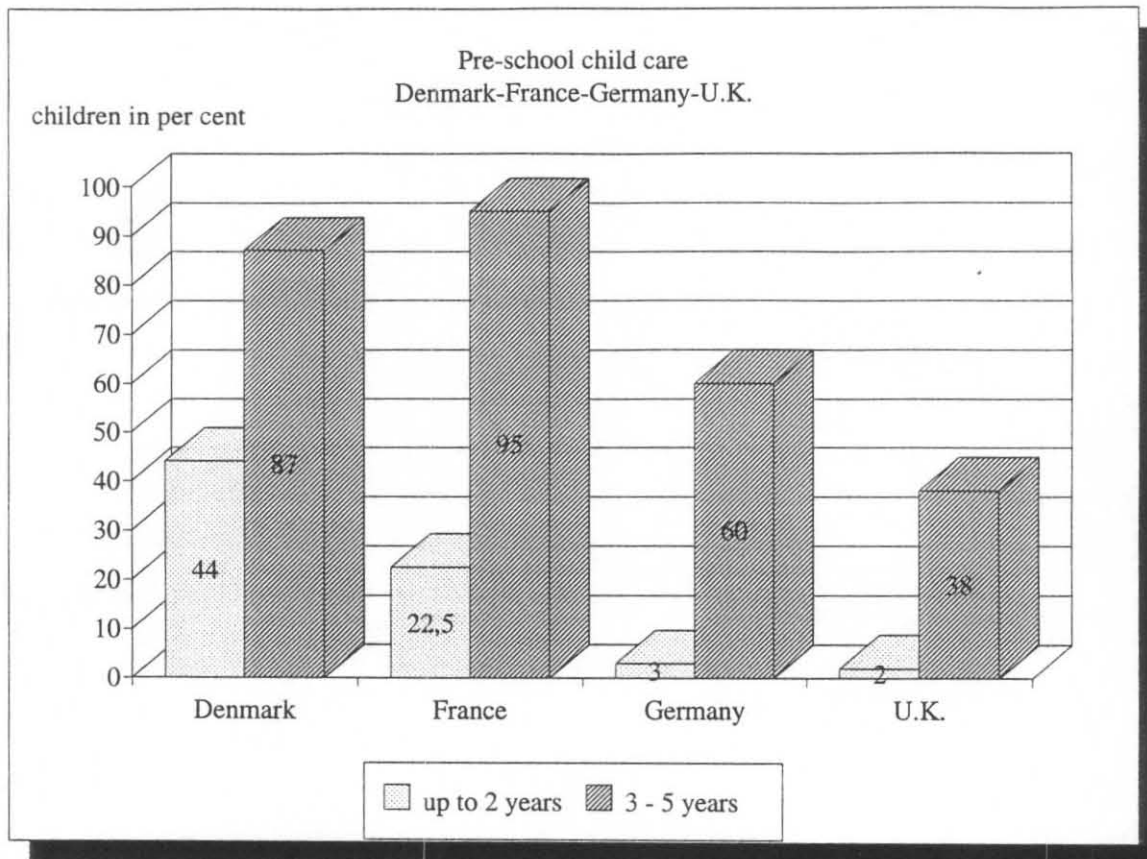
(3) 1986/1987 OECD Employment Outlook 1983 and 1988 Paris; Eurostat, Bildung und Arbeitslosigkeit, Luxemburg 1988, Gladstone, A.u.a. (Ed.), Current Issues in Labour Relations. An International Perspective. Berlin/New York 1989.

Chart 1



Source: OECD Employment Outlook 1991.

Chart 2



Source: own calculations on the basis of Gleisner, Angela (1992, p. 70).