The State and the Family

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Introduction: Dilemmas for government

The role of the state in regulating family life has been the subject of substantial analysis by social theorists since the 1970s. I do not propose to revisit the well trodden ground. Rather my starting point is a rather simple (perhaps simple minded) question:

Why does the state have so much trouble in its attempts to regulate family relationships?

Of course, there is a sense in which all policy initiatives are contentious. But I believe that most people would recognize that, where governments try to intervene in the personal lives of their citizens, their plans tend to elicit difficulties of a particularly sensitive kind. We can see this by considering two examples from the UK.

First, and most obviously, there is the example of changes in the last decade of the twentieth century in legislation on divorce and the subsequent care of children in the UK (see also chapters by Lewis and by Clarke). This is the political hot potato when it comes to regulating family life. The Family Law Bill, which passed through its final stages in Parliament in June 1996, is the archetypal example of a difficult piece of legislation for any government. It was not that there was a single principle that was being challenged by opponents. Rather, there were so many different ideological positions on marriage, divorce and child rearing being fought out in this Bill that it was literally impossible to produce a compromise which could even minimally satisfy all of them. The excellent work of Smart and Neale (1997) on the practical impact of this legislation, plus the Children Act 1989 and the Child
Support Act 1991, demonstrate amply the impossibility of producing family law which satisfies all the main constituencies.

My second example – inheritance – is less obviously politically contentious, but nonetheless raises difficulties, which are almost as tricky when governments try to regulate family relationships. The central problem is how to reconcile two areas of government policy, each of which bears on this. The two policies concern the care of elderly people, on the one hand, and the encouragement of property ownership, on the other. As is well known, the rising number of the ‘old elderly’ in the population has required governments all over the western world to rethink arrangements for the care of those who can no longer be fully independent.

The spread of home ownership would be claimed as one of the great achievements of UK Conservative governments since 1979, part of a core philosophy about the centrality of property-owning to the kind of society which they wished to create. John Major famously said, on being elected leader of the party, that he wanted to ensure that ordinary British families were enabled to accumulate wealth so that it could ‘trickle down the generations’. In encouraging home ownership, there is the implication that this will enhance family solidarity. However, it is obvious that there will not be many of these trickles if most people end up financing their last years through use of the resources invested in housing to purchase one of the many schemes for financing which insurance companies are enthusiastically supporting. This whole issue of how elderly people’s assets should be used was sufficiently important for the incoming Labour government to establish a Royal Commission on the long term care of the elderly. This reported in 1999, with central recommendations concerning the circumstances under which personal assets should be used to finance needs in old age (Royal Commission on Long Term Care, 1999). However, there has been divergence in the Westminster (London, England) and Holyrood (Edinburgh, Scotland) parliament’s response to these recommendations, with only the latter offering funding for long term personal care.

These two policy areas – divorce and inheritance – between them demonstrate the difficulties for governments when they try to formulate social policies or legislation, which have a potential impact on family relationships. The range of policies to which this refers can be quite varied: from those (like my example of divorce legislation) whose specific purpose is to regulate family relationships, to policies in a whole spectrum of apparently unconnected areas (opening hours of