I. THE POLITICAL AND SOCIAL POLICY ISSUES

The heading embraces a whole range of public and private policies and some trends in opinion which, while they are pretty diverse in themselves, feed into a debate of great interest in Europe and beyond. It is a debate with superimposed layers of thematic perspective. The first is about equality for men and women and eradicating sex discrimination; the second, the European Employment Strategy, and in particular increasing the rate of employment among women; the third, the demographic challenge posed by an ageing society, with the resulting need for care on the one hand and restoration of the demographic pyramid on the other\(^1\). The perspective chosen for analysis depends on theoretical and ideological factors with which we are sufficiently familiar and on which the following pages offer some reflections.

And beneath all these trends and opinions, some reference should be made to the technical foundations at play, and to the effects generated by each of them. Three fundamental ones in particular will attract our attention, without attempting to place them in any kind of a hierarchy at this point: first, a desire to promote – public – services for the care of dependents, be they children or elderly relatives; second, a concern to design arrangements for leave of absence from work so that people can interrupt their careers completely or partially to devote themselves to the tasks of caring; and third, the promotion of more flexible, adaptable conditions of employment so that those same people can coordinate their responsibilities at work and their obligations in private life more effectively, whether by means of their working hours, the type of contract or employment relationship they hold, or any other circumstances under which work is performed\(^2\). These three factors throw up a whole bundle of questions

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that need discussing, and there have been a number of developments in the Member States of the European Union, some moving in the same direction and others pulling different ways.

The focus of all this has a lot to do with values that are deeply rooted in people’s intimate sphere, especially their notions about the family, its composition and dynamics and the role that each member ought essentially to play within it. It is no accident that many of the themes that will be addressed here were tackled originally as key aspects of family policy. And where values are at stake, obviously, responses to public initiatives can be particularly intense, basically because, as some see it, the family nucleus should be protected, as the sacred arena of private relations, from administrative or governmental interventionism. Those beliefs have been challenged by feminist thinking, which called them into question and suggested, as the only key to emancipation, that these nuclei of togetherness be brought out into the political and public arena, hoping that the voice of public authority would manage to change behaviour and paradigms.

In general terms, underlying all these debates there is a conflict between models of a more or less traditional nature. On the one hand there is the classical model, which attributes to the male the role of family breadwinner, played out through his intense dedication to work that is economically rewarded and socially valued, but entailing a more or less rigorous neglect of tasks related to the care and nurturing of other members of the nuclear family, while it is the female’s task to exercise that burden of care without receiving economic recompense or social appreciation. And on the other hand there is another model which advocates a more equitable distribution of all these tasks between the man and the woman or which dispenses altogether in debate with the family dimension. In other words, a paradigm in which each person is treated as an individual and in which, from the employment perspective, men and women alike are indiscriminately valued as working adults. In the first of these models, and leaving aside for the time being any other consequences it may have, women are obviously marginalised from all the benefits of


employment and from the social benefits which accrue from it. Evidently, changes in family composition spark a transition from one model to the other. Usually, if the woman’s contribution to maintaining the family increases, there follows a shift from one model to the other, even in the face of fierce resistance. It has to be said that public policies can no longer assume bygone realities or the idea that men will always perform the paid labour and women the work of caring. Of course, it would not be right, either, to deny that the old scheme of things continues to influence reality, and so a situation has developed in which these roles are undergoing a certain imbalance.

And around those inertias derived from the old scheme of things, something happens which is difficult to overcome. Probably, in part at least, the traditional belief that it is right and proper for the sexes to do different work has been superseded. All in all, it would be appropriate to acknowledge a deep rift between social tenets and individual or collective attitudes. The latter are far more resilient to change, especially as public and private discourse likes to deny discourse seen as very old hat and undesirable. Moreover, as we shall argue, the new lines of orientation pay no attention to this role conflict and do not attack it, as if they failed to recognise the basic problem or have artificially declared it to be dead, whereas in practice many of the old ideas are still festering and clinging to life.

Around this traditional division of gender roles, a fairly self-interested debate has grown up about the choices individuals have and the decisions that have to be taken within the family unit. Even the European Commission has taken up the discourse, declaring in headline mode that the choices men and women make when reconciling their professional, private and family life are fundamentally personal. The rhetoric of choice has, in fact, consigned an alleged vocation for care to decision-making that is highly conditioned, while also using it as an excuse for maintaining a situation of profound inequality and injustice between men and women. It is true that choice is a hallmark of identity in democratic societies, and almost all European systems are founded on a choice between more formal and more informal arrangements for taking care of children and family dependents. But this is a choice between two viable and acceptable alternatives in the service of a less patriarchal model. Especially as,

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6 This is the view taken by LEWIS, J., KNIJN, T, MARTIN, C. and OSTNER, I., op. cit., p. 265.
to be more specific, choosing a system based on parental leave rather than one based on public provision of childcare means accepting clear consequences with regard to the development of people’s occupational careers. And it is a choice which must be based on the plausible assumption that a male progenitor could take on the task of care or, at least, share it more equally with his female partner. In reality, however, these free choices are often, even in national rules, transformed into incentives for women workers to break off their professional ties in order to look after the family, especially if they are provided with enough indemnification in the form of social benefits.

The debate was clearly unleashed by feminist discourse and a call for fairer task sharing. In our own day, paradoxically, and despite the central importance attributed to the debate about work-life balance, the discourse about working in the home and who does it is less vigorous than it used to be. Depending on the practice in different countries, the idea is sometimes encouraged that these tasks can be performed along the lines of traditional roles, with the help of a few institutions to enable women to carry their double burden. Others have chosen to stimulate domestic labour by formalising it within a policy of community employment, although generally speaking without drawing attention to any male involvement in the tasks concerned. Men’s involvement and the demand that they share domestic chores and care have become less visible in recent years in the course of a series of trends that we shall be considering here. The general diagnosis is that the issue of who should perform work in the home has been overshadowed. In practice, this means that inequalities are proliferating in the labour market, with all the knock-on effects that follow from continuing to expect women to submit to this burden. They are called upon to split themselves between paid and unpaid work, between work that society values and work that it does not.

Probably, the work-life balance theme has had quite a lot to do with the shadow that has obscured the old debate about the work of caring. We might even claim that promoting the former has served as a smokescreen over men’s uncomfortable responsibility for the tasks of care and housework. To the extent that labouring in the bosom of the family may be harmoniously compatible with those who perform it maintaining a presence in the formalised world of

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8 LEÓN, M., op. cit., p. 198.
relations of production, it could be argued that domestic burdens are no obstacle to pursuing a career. This means that the question of who does the caring or assumes the responsibilities takes a back seat. The point is that care should cease to be an impediment to work, and so we can abandon the quest for a better balance between the roles of men and women in society and move on to defend a new balance between the demands of employment and those of the family. In this renewed scenario, the gender division of labour is no longer challenged and the double burden is not a visible problem\textsuperscript{10}.

In this light, work-life balance could turn out to be a cunning male defence mechanism. Now we are trying to help women truly reconcile their social role of looking after the family with their profile as workers, be it for their own account or for someone else’s. In fact, this take on things is by no means absent from the European landscape. And it is, of course, implicitly - or explicitly - defended in political theory and practice. So reconciliation is a topic associated with women working and the rules which govern that. From this point-of-view, reconciliation comes to mean something like help or support for mothers, which rather simplifies the facts. It is so accident, after all, that the term has been enthusiastically adopted by some of the more reactionary circles of political thinking.

European discourse has not been left untouched by this process. We shall not trace the origins at this point, but it is clear that Community documents, especially after the First Social Action Programme of 1974, took on board the feminist debate about the need to share domestic chores and the task of care. Nevertheless, the progressive change in language has been graphic. In the Community Charter of the fundamental social rights of workers adopted at the Strasbourg Summit in 1989, the sharing theme was transmogrified into one of reconciliation, and at the same time responsibilities of care became duties. Sharing arises from a discourse of equality and equal rights, ultimately an idea about public and private ethics. Reconciliation, by contrast, posits a market perspective. As the following pages will argue, this perspective has been particularly nourished and asserted by the European Employment Strategy\textsuperscript{11}.

The Community’s own judicial sources provide ample evidence that equality discourse has suffered a major setback in this scenario. In other words,

\textsuperscript{10} Ibid., pp. 42 ff.
\textsuperscript{11} Once again I must draw attention to the very interesting work by STRATIGAKI, M., quoted repeatedly in these pages, pp. 30 ff.
that there is no close link between equality or anti-discrimination and institutions such as parental leave. No doubt the case-law from the Court of Justice of the European Union is a highly privileged observatory. When it has been called upon to tackle institutions such as parental leave, a shorter working day or career breaks, it has been very short-sighted about recognising that refusing these or according them particularly pejorative treatment in a legal regime can have adverse effects on female groups and subsequently lead to indirect discrimination. One might delve back much further, but the legal foundations of the judgment in the Gómez Limón case\textsuperscript{12} are a clear paradigm of this divorce between anti-discrimination law and the provisions on parental leave. Strangely, the odd national constitutional court, like the Tribunal Constitucional in Spain, has adopted a stance that is far more sensitive to the discriminatory implications, especially given a line of argument which substantiates the perpetuation of social roles\textsuperscript{13}.

I do not believe there can be many objections to what has been said so far, but from this point onwards we have to enter into an analysis of the more concrete problems and the role of equality, or what is left of it. Because, although the terms of the problem have been posited on this level, from the perspective of social policies and legal systems, reconciliation and equality form a field of analysis with very close affinities. This is recognised, at least as a formal concession, in the documents on reconciliation from the Community institutions, which assert that one of its strategic objectives must be to enable women to achieve greater economic independence and that reconciliation measures must aim to strengthen equality\textsuperscript{14}. Besides, from another point-of-view social circumstances have encouraged public decisions that relate to people more individually and consider them less as members of a family unit. The individualisation of rights has also been a classical thrust of feminist

\textsuperscript{12} C-537/07, Judgment of 16 July 2009. The following passage could be highlighted: “...it must be noted, as the national court has pointed out, that, in order to devote themselves to bringing up their children, women opt much more frequently than men for periods of reduced working time and a proportional reduction in salary, resulting in a reduction in social security entitlements derived from the employment relationship. Nevertheless, according to established case-law, discrimination consists in the application of different rules to comparable situations or the application of the same rule to different situations (see, in particular, Boyle, paragraph 39, and Lewen, paragraph 36). An employee benefitting from parental leave, to which she is entitled under Directive 96/34 implementing the framework agreement on parental leave, in a manner defined by national law or by collective agreement, who works only part-time as is the case in the main proceedings, is in a specific situation which cannot be compared to that of a man or woman who works on a full-time basis (see, to that effect, Lewen, paragraph 37).”

\textsuperscript{13} I am thinking, for example, of judgment 3/2007 passed by the Spanish Constitutional Court on 15 January.

\textsuperscript{14} “A better work-life balance...”, cit., pp. 9 and 13.
thinking and little by little Community policies – among them, as a spearhead, employment policy – have assimilated it in the light, among other factors, of demographic pressures and new patterns in the formation of personal groups\textsuperscript{15}.

We cannot fail to include the demographic dimension to a question of this nature. There are a number of tensions here. The first concerns evidence about the ageing population and the decline in the birth rate and female fertility rate. These trends give rise to various debates, but basically the following ones: the growing need to care for dependents, which should be tackled by more formal mechanisms rather than the classical model of the (female) informal carer; the need to improve birth ratios, to which end public measures must create more tempting scenarios for taking on maternity and paternity and not differentiating too much between them; and the urgent need to rejuvenate society to ensure solidarity between the generations in all fields, public and private. With all these grand objectives, the challenges of reconciliation are obviously of prime importance. There is much empirical evidence that fertility rates are substantially lower in the Member States where professional and family life are less well reconciled. And incidentally, there is a strong belief that there is a direct link between higher female employment and higher fertility\textsuperscript{16}. As we might expect, from a demographic perspective the Community institutions regard reconciliation policy as a very sensitive factor\textsuperscript{17}.

Nor should we fail to mention the technique of mainstreaming. Having been acknowledged by the European Community when it was publicised at the Peking Summit in 1995 and adopted as a political tool at the highest level by dint of Article 3.2 of the Treaty of Rome, it must now always be taken into account. If no action by the Community is immune to equality and anti-discrimination, there is reason enough to place the gender credentials of reconciliation beyond doubt. And yet the different effects it has on the two sexes are very obvious. Gender impact means granting priority to the equality dimension. This is a legal requirement, and so it is legitimate to ensure it can play its leading role.

\textsuperscript{15} On this individualisation cf. LEWIS, J., KNIJN, T, MARTIN, C. and OSTNER, I., \textit{op. cit.}, p. 274.
\textsuperscript{16} For more, you may consider consulting my study \textit{La conciliación…}, \textit{cit.}, pp. 21 ff.
\textsuperscript{17} LEÓN, M. \textit{op. cit.}, p. 206.
II. ON PARENTAL LEAVE

Of course, this applies to institutionalised arrangements for reconciling professional and private life which are rooted in Community legislation. Or at least those based on a traditional regulatory instrument, Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave. We can do no more here than sketch its contents and recall that it recognises the individual right of each progenitor to three months of leave in which to look after children up to a maximum age of eight years, with reinforced guarantees protecting anyone who takes or requests this leave from dismissal by their employer on that account. The break triggers a right to return to the same job or an equivalent one and in the meantime any entitlements that have accrued or continue to accrue will be preserved. In addition, the right is enshrined to take absence of leave from work on grounds of force majeure for urgent family reasons in cases of sickness or accident making the immediate presence of the worker indispensable.

In fact, this is the entire imperative substance of the Directive. Beyond this it contains a non-binding recommendation that on principle parental leave ought not to be transferable. And then it is left to national parliaments or state-level agreements between the social partners to take a number of concrete decisions: a) whether the leave should be taken on a full-time or part-time basis, in a piecemeal way or in the form of a time-credit system; b) whether the entitlement shall be subject to a period-of-work or length-of-service qualification; c) how to adjust leave to the special circumstances of adoption, d) establishing periods of advance notice which specify the beginning and the end of the period of leave, e) defining circumstances in which the employer is allowed to postpone granting parental leave for justifiable reasons related to the operation of the undertaking, and f) authorising special arrangements to meet the operational and organizational requirements of small companies.

As to the source of law, the Parental Leave Directive is a unique and noteworthy document, above all because it is one of the first examples of an agreement concluded and signed by the social partners and promoted to the status of a directive by a Council decision. This negotiated character, of course, explains some of the more obvious dissatisfactory elements, given its meagre

imperative content and its sole focus on care for children. In many ways, it shows signs of a “victory” on the part of the employers, whose tenets prevailed over those of the trade unions. One symbolic example is its failure to contemplate even minimum pay for anyone who takes leave to look after their children19.

Apart from that, its status as a Community agreement does present one aspect of particular interest, because in all likelihood the changes in attitude that it can promote at collective level are greater than would have been obtained by the traditional method of passing directives. By attributing a major degree of initiative to the social partners, the Commission is involving them in developing social policies aimed at reconciling family life and work. From this point-of-view, we should acknowledge that quite possibly collective bargaining may help such themes to percolate more effectively than a binding instrument which, when all is said and done, will always be the Commission’s baby.

In practice, of course, the Directive works like an instrument of soft law, given its very meagre harvest of imperative provisions, but also in so far as it offers Member States and the social partners a variety of options for taking their own internal decisions with broad room for manoeuvre. In this respect it might be regarded as a “modern” directive, because it partly escapes the current debate about the primacy of hard or soft law. Being halfway between the two, and despite being formally a binding instrument, it functions like a call to good faith20.

Certainly, in practice the Directive reflected the smallest common denominator. At the time there were a series of relevant events which encouraged this evident “prudence” in secondary law mandates. One was the absence of the United Kingdom during the elaboration of Community social policies, given that the Directive was approved under the umbrella of the Social Policy Agreement attached to the Treaty of Maastricht. Another was the recent accession of the Kingdom of Sweden, which did not play an active part in formulating the Community instrument. In practical terms, Sweden’s entry was of key significance in driving forward the practice of other Member States with regard to parental leave, encouraging the statutory entitlement of fathers and

19 In this respect, LEWIS, J., Work/family reconciliation, equal opportunities,..., cit., pp. 431-2.
20 On these directives offering various alternatives, see TRUBECK, D.M. and TRUBECK, L.G., Hard and soft law in the construction of Social Europe: the role of the Open Method of Coordination, European Law Journal, vol. 11, no. 3, pp. 359 ff.
adequate social security benefits. In addition, there was the arrival of the Mediterranean Member States of southern Europe, who lacked a tradition of regulating such matters and whose social models were not likely to encourage fathers to assume their role as family carers. In this context, it is logical to think that the Directive was fundamentally conceived – at least by many of the protagonists – as a tool of family policy rather than an instrument of gender equality. There was, therefore, an obvious tendency to see parental leave as related to family wellbeing rather than women’s right to equality, as we have already discussed, especially as it contradicted all the demands and values of feminist thinking. After all, the Directive was fundamentally an effort to inject more flexibility for workers and intended less to reinforce the equality principle.

Having said that, it is strange to note that more recent Community policies, while they have not been derived from any imperative provisions of social policy, reveal a preference for or greater emphasis on the use of childcare services than on granting parents leave to look after their own children. Suffice to say for the time being that parental leave is an ambivalent device from the employment perspective. On the one hand, it is clear that it links working people – and women as the most affected group – to the labour market and the preservation of employment relationships, to the extent that it makes raising children compatible with remaining on the books of the productive entities to which they belong. From another angle, however, there are few real doubts that, for anyone taking up the offer, it has a deprofessionalising impact and acts as a brake on career prospects and promotion. Admittedly, it can be taken on a full-time or part-time basis, piecemeal or in the form of a time-credit system, but it does imply some arrangement whereby the worker is materially detached from daily operations. Especially when leave covers a lengthy period, and even though there should be sufficient social security provision, the system does result in major labour distortions. Obviously, a woman who takes advantage of these institutions loses out on experience and opportunities to advance her occupational career. Even worse, if the social protection provided by the public welfare system – or possibly occupational social security – is deficient or non-existent, this will be more grist to the mill of a model which sees father as bringing home the family money and mother as caring for the family and looking after the home.

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22 On this assessment, consult LEWIS, J., KNIJN, T, MARTIN, C. and OSTNER, I., op. cit., p. 263.
23 LEÓN, M., op. cit., p. 203.
Bearing these things in mind, the challenges are clear. The European Commission, at least in the rhetoric of its documents, refers to the need to “mutualise the costs of maternity and parental leave allowances”\(^\text{24}\). On paper at least, this is a declaration of intent and a commitment to address the division of labour. In this respect, reconciliation is – on the basis of that declaration – part of a plan in which special attention must be given to the shared responsibility of women and men in the family arena. The recipes in this context are fairly well known. Above all they entail reinforcing the non-transferability of leave and the quota for fathers. Besides, in more general terms, the Commission would like to see incentives for fathers to take up their entitlement\(^\text{25}\). As to social security cover, there is a difficult tight-rope to tread between, on the one hand, offering no social security provision at all or only an absurdly low benefit, which would amount to encouraging and reinforcing the father’s basic role as family breadwinner and the mother’s image as a pillar of care and housework, and on the other, offering excessive benefits that would discourage the recipient from returning to work at the end of the leave, if at all. It appears that appropriate public policies are needed to provide incentives to people taking parental leave to return to their jobs without undue delay\(^\text{26}\).

On the subject of social security benefits, an important question arises as to whether systems should favour the informal carer or whether it might not be better to opt for a system that encourages paying for the services of formal carers\(^\text{27}\). If we look at what has been happening in France, we will observe clear tensions over this issue which have not been properly resolved.

Finally, it is worth mentioning one aspect to which the European Commission refers and which presents a new challenge to reconciliation policies, and one which has been insufficiently explored. This is the appeal to apply them as far as possible to the self-employed.

\(^{24}\) *A better work-life balance…*, cit., p. 4.

\(^{25}\) Ibid., p. 5.

\(^{26}\) As argued by LEWIS, J., KNIJN, T, MARTIN, C. and OSTNER, I., *op. cit.*, p. 277.

\(^{27}\) On this see LEÓN, M., *op. cit.*, p. 204.
III. CARING FOR CHILDREN

In terms of organisation and public policies, services for looking after children obviously require a larger dose of involvement from governments and regional or local authorities. It is much simpler to grant parental leave, or even link it to a public benefit, than to set up institutions to provide sufficient care of appropriate quality. But there is also enough evidence that their impact is much more effective than that of other reconciliation policies. In particular, much has been written about the relationship between reliable services and a very significant increase in female employment\textsuperscript{28}.

Nevertheless, the way they have been addressed in Community provisions is radically different from the take on parental leave. There are no binding rules in this field. Rather, the approach has been one of soft law: defining objectives, identifying good practice and monitoring progress towards goals. A certain preference can be discerned in the Community context for having care services in addition to parental leave as a more suitable and useful tool in designing policies for the reconciliation of private life and work, and of course this seems to be a paradox given the absence of initiatives that adopt the traditional regulatory methodology. However that may be, within the doctrine there is fairly solid consensus about the preference for a care network in addition to a framework of parental leave arrangements\textsuperscript{29}.

There is no doubt that childcare services have a few additional virtues which other institutions and rights lack. Basically, they favour social integration, both from the children’s perspective and that of their working mothers. As far as the latter are concerned, the availability of childcare facilities, whether they are publicly owned or publicly funded, enables them to escape the vicious circle, making it worth their while to take a job. In this sense, as we shall see, they are a basic tool in the European Employment Strategy and in achieving a more inclusive labour market.

Indeed, the Barcelona Council in 2002 set quantitative targets: by 2010 the Member States were to provide care places for at least 90\% of children between the age of three and the age of compulsory schooling, and for at least 33\% of children under three. However, despite the Commission recognising

\textsuperscript{28} Ibid., 203.
\textsuperscript{29} On behalf of them all: LEWIS, J., Work/family reconciliation..., op. cit., p. 434.
that such objectives have become part and parcel of the European Employment Strategy, the fact is that the vast majority of Member States are not on the way to achieving them, especially with regard to children under three. And also, when facilities do exist, they are often costly or the opening hours are not compatible with full-time work or jobs with atypical hours\(^{30}\). All in all, the biggest defect in this field is probably the failure to formulate quality targets and the inadequate implementation of benchmarking processes to flag up best practice that might serve as a model or inspiration.

IV. A NOTE ON FLEXIBILITY IN EMPLOYMENT CONDITIONS

This, without a doubt, is the third side in the reconciliation triangle, now we have considered parental leave and childcare services. In fact, an especially big part has been played in this issue by everything relating to working hours, to the detriment of other, perhaps less visible factors. Among these, the European Commission has placed quite a lot of emphasis on teleworking as a tool in the service of the work-life balance\(^{31}\). True enough, the European Framework Agreement on Telework of 2002 refers in both its preamble and its provisions to the potential this form of employment offers for reconciling occupational and private life, without ignoring the risks and challenges it implies.

In fact, this is just one more example of a certain tendency to ascribe to atypical employment most of the answers to reconciliation challenges. The most obvious example is surely the star role played in this context by part-time work, a real hothouse of female employment in some Member States, most notably in the Kingdom of the Netherlands. Basically, this is about promoting the model which sees women as earning pin money within the family unit, or, if you prefer, “nice little jobs for nice little women”\(^{32}\). Rather than undermining the division of tasks in any way, it is an arrangement for integrating people with family responsibilities \textit{ad hoc} into employment.

Reconciling family life has not played much of a part in the more flexible approaches to organising work time. By way of an illustration, we might recall that the original version of the Working Time Directive 93/104/EC did not

\(^{30}\) A better work-life balance…”, cit., pp. 7-8.  
\(^{31}\) \textit{Ibid.}, p. 6.  
devote a single word to the subject. This could have been explained by the years that the Community institutions spent deliberating about it. But nor was it taken on board in the revision of 2000 (Directive 2000/34/EC), during a period when reconciling family life had already acquired a certain status within the framework of the European Employment Strategy. And of course, things did not change when it was recast in 2003 (Directive 2003/88/EC). To the extent that we can only conclude that, at Community level, legislation on such an important matter as working hours has been drawn up behind the back of work-life balance. Admittedly, during the process of reforming the Directive that was thwarted in autumn 2008 we began to hear the rhetoric of flexibility in the interests of women workers, but this did not produce any concrete regulatory effects apart from introducing a greater degree of flexibility in the interests of employers. Some may well claim that the Working Time Directive is only about occupational health and safety, but in practice that is not true at all, in that it is extremely sensitive to the demands of employers anxious to adapt the rules on working hours to their needs33.

Whether general rules about the working day should have much or little to do with the need to meet family responsibilities is one thing, but another very different question is whether a certain legal instrument has any particular consequences for the organisation of people’s lives once they are away from work. To demonstrate this, one writer has cited the example of the French system, where the enactment of the maximum 35-hour week under the government of Lionel Jospin was a milestone which had an extremely positive impact on the scope for organising private life. To such a degree, in fact, that this law has been identified as one of the triggers behind the low popularity of part-time employment in that Community country34.

And from another angle, I suggested before that formulating the Parental Leave Directive as a Community agreement might have encouraged the social partners to become more deeply involved in applying it, with possibly more leeway for autonomous collective bargaining on this matter. We could say the same about a condition of employment – working hours – which lends itself so frequently to regulation by agreement. Although the general landscape is far from satisfactory in this respect, we should recognise that there is no shortage

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33 On this see CABEZA PEREIRO, J., “Las fuentes reguladoras de la jornada de trabajo”, in APARICIO TOVAR, J. and LÓPEZ GANDÍA, J (coordinators), Tiempo de trabajo, Bormarzo (Albacete, 2008).
34 LEWIS, J., KNIJN, T, MARTIN, C. and OSTNER, I., op. cit., p. 277.
of good examples under the widely varying circumstances of European Member States.

V. THE SPECIFICS OF RECONCILIATION AS AN EMPLOYMENT POLICY

As we have already seen, employment policy is doubtless the arena where, over recent years, developments around the question of reconciling work and private life have been the most fertile, here in relation to women in the labour market and the target of achieving a 60% female employment rate by 2010. Doubtless, expanding the presence of women in the labour market is an objective that calls for more policies to facilitate a work-life balance. In this sense, the Community institutions have brazenly confirmed the established social order, where women can only work under certain conditions because they have to deal with a barrier which men do not face – the need to juggle their responsibilities at work and away from it. There is no need to reiterate that, unfortunately, Community practices have not on the whole been particularly militant when it comes to the sexist division of labour. It is only a desire to bolster the labour market that has made the European Commission engage in an active commitment to policies that aid reconciliation. Or, to put it another way, it has not set out to fight the status quo. Only the grand goals of economic policy have sharpened its sensitivity to the matter. Of course, it is only being honest when it stresses that these reconciliation policies are embedded within the broader objective of drawing more people into the labour market. All this is rooted in particular in the Kok Report, which highlights the need to increase women’s participation in the work force. To this end, it is vital to improve access to childcare and care for the elderly, to enhance their quality and to cater for the needs of disadvantaged women.

It is a curious thing that, in the end, it was the Treaty of Amsterdam which, for various reasons, completed the integration of reconciliation as a major Community policy, firstly by incorporating the Social Policy Agreement into the Treaty, and secondly – far more important – by means of Title VIII,

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35 Many are described in Reconciliation of work and family life and collective bargaining in the European Union, European Foundation for the improvement of living and working conditions, 2006.
which later gave birth to the Employment Strategies of Luxembourg and Lisbon. The conclusion, then, is that the aforementioned policy only received focal attention when it was placed under the broader wing of employment. In this respect, it was co-opted, ceasing to be fundamentally a family policy, and certainly no longer an equality policy, but blatantly transformed into an employment policy. The logic behind it was not to redistribute tasks, but to generate employment. In this sense, women were identified as a collective who needed luring into the labour market. Employment policy tries, as it ought, to employ neutral language with regard to men and women, emphasising that we are all citizens, regardless of our sex. However, this will not prevent us from pointing out some of the specific requirements that a labour market must fulfil if it hopes to attract more of the female gender.

In fact, the logic of employment has dragged reconciliation well beyond the simple logic of flexicurity. From serving an inclusive labour market, where flexibility for the employer goes hand in hand with flexibility for individuals and a minimum of security enabling them to advance in their lives and careers, the work-life balance has moved on to become a priority in its own right. Of course, this is about having an institutional tissue of sufficient quality providing care and support to children and other dependents. But it is also about social benefits derived from the entitlement to parental leave, enabling individuals, within a transitional labour market, to shift both ways between paid work and the work of care without incurring excessive economic costs or major disadvantages in their occupational careers. Generally speaking, it is very easy to understand that women, when finding a job and pursuing a career, will rely more heavily on men on there being a network of quality employment services offering jobs that can generate sufficient resources. And it is also easy to see that these services prove less efficient for women than for men, unless services to the family are taken into account, whether financial or in kind.

All in all, and as a component of reconciliation to which only summary reference can be made, it has to be recognised that, from the angle of employment policy, women are trapped in the secondary labour market, where the hallmarks are part-time jobs, calling for particular flexibility, with fewer

38 STRATIGAKI, M., op. cit., p. 38.
39 LEWIS, Work/family reconciliation..., op. cit., p. 428.
41 Ibid.
labour rights and fewer social security entitlements, and in an environment of what is called atypical employment. True enough, the European Commission has accepted this distortion, recognising that since the Lisbon Strategy was adopted in 2000 female employment has improved in quantitative, but hardly in qualitative terms. In this sense, there is no doubt that all the policies on parental leave and care services, like those on flexible working hours in the interests of working people, are part of what we would call qualitative aspects of employment.

All in all, and despite the Commission rhetoric denying it, it seems as though the subject has become less of a priority in recent years, even in the employment sphere. As an eloquent example, let us recall that, in the initial version of the four pillars of the Luxembourg Strategy from 1997, one of these was equality, providing a fairly natural haven for work-life balance policies. However, in the wake of the familiar vicissitudes of the Spring Councils, when the design of the pillars fluctuated considerably in the altercation between the Commission and the Member States, the equality pillar as such vanished from 2005. It has been replaced by a - no doubt far more realistic - logic which would synthesise the general guidelines on economic policy and those on employment. The latter, which would only require exhaustive review every three years, are to be reduced to eight, none of which refer explicitly to matters of gender or reconciling work and family life, which is not to say that they have no link with a number of the others.

VI. BRIEF COMMENTS ON SOME TRENDS IN THE LAW

My aim at this point is not to describe the legal provisions of various European countries in any systematic way. That is a difficult exercise and one which falls prey to a substantial rate of change. But I would like to offer some

42 STRATIGAKI, M., op. cit., p. 45
44 This is the conclusion of LEWIS, J., Work/family reconciliation..., op. cit., p. 434.
46 Un enunciado comentado de las mismas en CABEZA PEREIRO, J., Estrategia Europea..., cit., pp. 55-6.
47 There is a (now out-of-date) attempt to do this in CABEZA PEREIRO, J., La conciliación..., cit., pp. 21 ff.
bearings and indicate trends. On the whole, the rules underlying the Scandinavian models have inspired certain reforms, the most evident case being the Federal Republic of Germany, where there have been developments in the idea of non-transferable leave, with a quota reserved for fathers and social protection which helps to overcome the traditional model of the father as the family breadwinner. At the same time, however, and clearly inspired by the European Employment Strategy, these policies have been used to encourage women to remain in the labour market. To this end, very deliberate incentives are provided for an early return to work on the part of anyone able to take parental leave, with a growing network of nurseries and other childcare services, especially for the age group of under-three-year-olds. In sum, the intended effect is to make it easier to raise children while holding down a job. This, clearly, includes a strain of policy to stimulate the birth rate.

In the Republic of France family policies, with their traditional focus on childcare provision and social security benefits, have served in practice to support women in their dual role as women and mothers. In recent years a number of tensions have evolved through which, on the whole and despite the continued operation of a notable network of nurseries, there has been a stronger growth in subsidies to provide for looking after children, either in the form of informal care arrangements or by hiring domestic labour under the community jobs policy. This has resulted in a more supple system allowing mothers to choose whether to look after their children or take a job, as part of deliberate policies which have sometimes sought to remove women from the labour market as a way of combating high levels of unemployment. And this in the context of a system which has not offered any incentives at all for fathers to take parental leave.

As for the Spanish system, recent legislation in relation to parental leave has primarily been oriented towards creating the right to a brief period of paternal leave – at present fifteen days for general application – but maintaining longer periods of leave or shorter working hours which are not covered by the social security regime, with all the resulting distortions. It should be acknowledged, however, that recent legislation – especially Ley Orgánica 3/2007 of 22 March – makes a strong rhetorical case for men’s shared responsibility in the tasks of care. An ambitious Dependence Act – Ley 39/2006 – did seek to

48 There is a rather more systematic description of the facts, not to mention other systems, in LEWIS, J., KNJIN, T, MARTIN, C. and OSTNER, I., op. cit., pp. 261 ff.
provide public backing and support for all kinds of care for dependants. The regional Comunidades Autónomas, meanwhile, are establishing objectives with varying degrees of ambition for funding crèche places for children under three, with patchy results.

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In general terms, the trends we can discern are contradictory. Perhaps, as a final reflection, there should really be two parallel debates. The first would be about the values that drive the design of policies for reconciling family life and employment and the precedence that is given to them. Quite possibly – and that would be a fine thing – one is the desire to distribute tasks in a non-sexist way between men and women. Probably protecting the family as an economic and social unit is a factor. Another is boosting the birth rate, partly in response to the ageing population and the need to create mechanisms and institutions to care for dependants. Then again there is inclusive employment policy which has a place for women, whether as equals and working adults, or as a secondary workforce generating supplementary income.

The other debate would be about the instruments to employ. This second debate would depend on what comes out of the first. We have seen in the last few pages that there are few doubts these days about the virtues of having a system which can deliver adequate public services of quality. That does not mean looking down on policies that recognise leave to raise children with adequate support from the social protection regime, as long as we are clear that they have a definite impact on the individuals concerned, who lose out on occupational skills and career advancement. There is also significant interest in the possibility of making employment more flexible by adapting conditions to meet the private needs of individuals, although this entails a patent risk that it will generate a ghetto of atypical work with no social recognition at all.

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