



## **Affirmative Action: Liberal Accommodation or Radical Trojan Horse**

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### **Introduction**

Affirmative action has been a subject of controversy in Australia since well before its legal birth in the Commonwealth *Affirmative Action (Equal Employment Opportunity for Women) Act 1986*. Traditional worries from the left concern its comprehensiveness, as being too ready to settle for a limited, "liberal feminist" agenda. Critics from the right have typically worried about singling out "special interests" for "special privileges", appealing to the classical liberal commitment to formal equality. Currently, a new set of right-wing objections springs from the economic libertarian agenda which places an individualist concept of competition at the centre of its value system.<sup>1</sup>

Affirmative action can be called a "liberal" measure on a number of counts. Seeking to increase women's numbers in the paid workforce, it echoes traditional liberal concerns that rights and freedoms be equally available to all. While its faith in the mechanisms of the state to bring about beneficial change belie the "classical liberal" suspicion of government, its optimism about the reformist potential of existing political institutions gives it a philosophical foot in the "welfare liberal" stream. Yet, viewed as a liberal

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<sup>1</sup> See the current Department of Workplace Relations and Small Business review of the *Affirmative Action (Equal Employment Opportunity for Women) Act 1986*. The "Issues Paper" to which the review has invited submissions sets out the criterion of competition as the central one by which affirmative action is to be evaluated.

measure, affirmative action seemingly cannot win: its critics damn it as either too liberal or not liberal enough. Each criticism rests on a different interpretation of liberal tradition, and finds affirmative action wanting by the critics' distinctive standards.

Criticisms from the right currently have a Federal government behind them which has shown every indication of preparedness to dismantle some programs which, by targeting disadvantage, violate its own view of formal equality or which can be construed as "anticompetitive". Criticism from the left, together with shortcomings in the *Act's* mechanics, may weaken feminists' resolve to defend it. Yet the *Act* can be read as embodying substantially more radical possibilities than its present implementation would suggest, or than are usually identified with it; and these possibilities, not just its admittedly limited gains to date, make it worth defending. This paper will address criticism from the left, proposing that the more radical reading which arguably lies nascent in the *Act* points not only to untapped possibilities for strengthening the position of women in the workplace, but also a novel approach to the longstanding feminist concern with the place of the public-private distinction in liberal thought.

### **Is affirmative action too liberal, or not liberal enough?**

Critics from the left draw attention to affirmative action's assimilationist tendencies and complain of its failure to challenge hierarchy or unequal distribution.<sup>2</sup> They see affirmative action favouring women's entry into the corporate battle of each against all, rather than offering any serious questioning of such competitiveness. In particular, they see it as paying too little attention to sexual difference (when affirmative action is read as promoting women's assimilation into male structures) and to inequalities of class and race (when it is read as accepting the existing hierarchical distribution of incomes and working conditions). If we were to look for a general theoretical theme in much of the left critique, then, it would be that, promoting some women's climb up the corporate ladder at the expense of other women and some men, affirmative action is seen as overly individualist.

This is in stark contrast to criticism from the right, which holds, on the contrary, affirmative action is inappropriately corporatist. On the traditional right argument, it damagingly promotes the collective identity of a special

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<sup>2</sup> Eg Iris Marion Young, *Justice and the Politics of Difference*, Princeton UP, 1990, pp 193, 200

interest group (feminists) against a pluralism in which everyone's individual characteristics are celebrated as part of a general "diversity"; in the emerging libertarian critique, it potentially undermines free competition both between individuals (for jobs) and between businesses (as they are unfairly constrained by having to adhere to programs aimed at redressing disadvantage).

To the right, affirmative action ignores liberal commitments to individual self-reliance and enterprise, while to the left it is only too ready to rest with a liberal agenda at the expense of more thoroughgoing reform. As affirmative action policies come under threat from a conservative backlash, it seems appropriate to reconsider their relationship to liberal theory.

### **Liberal and Radical: Distinctively Australian Affirmative Action**

Australian affirmative action arises out of struggles by feminists to improve the lot of women. While it is common in Australian affirmative action literature to compare the Australian scene with the ethnic minority-focused affirmative action of American law, Carol Lee Bacchi's recent study<sup>3</sup> points out that programs, comparably woman-focused to Australia's, operate in a number of European countries. Thus, while some might argue Australian affirmative action is merely a pale copy of the American model, Bacchi's international comparisons, together with a glance at the historical genesis of affirmative action in Australia, suggest it is legitimate to view the Australian form of affirmative action as an authentic expression of feminist commitments (however advocates of racial and class equality might prefer

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<sup>3</sup> Carol Lee Bacchi, *The Politics of Affirmative Action: 'Women', equality and category politics*, SAGE, London, 1996.

that it had been given a broader expression<sup>4</sup>), and not as just a truncated version of American affirmative action.

The feminist movement of the 1970s and early 1980s, during which Australian affirmative action policy was first mooted and then formed<sup>5</sup>, was, like feminism everywhere, diverse. While Australia had and has vibrant strands in the traditions known conventionally as "socialist feminist" and "radical feminist", public policy has been most profoundly influenced by the "liberal feminist" dimension of the movement<sup>6</sup>. A distinctive feature of

<sup>4</sup> On this point, see Poiner and Wills's observation that affirmative action in the USA was proposed originally as a measure to assist ethnic minorities, women only being introduced as a category on their own as an attempt by the right to discredit the bill (Gretchen Poiner and Sue Wills, *The Gifhorse: A critical look at equal employment opportunity in Australia*, Allen & Unwin, Sydney, 1991, p 28). Increasingly, ethnic majority feminists are responding to criticisms from ethnic minority women that feminism has been, through most of its nineteenth and twentieth century history, a 'white women's movement'. For a concise account of debates within second-wave feminism, see Lynne Segal, 'Generations of Feminism' (May/June 1997) 83 *Radical Philosophy* 6-16. For critiques of 'white feminism' see eg bell hooks, *Ain't I A Woman? Black women and feminism* Boston: South End Press, Boston, 1981; Gloria T Hull, Patricia Bell Scott and Barbara Smith (eds), *All The Women Are White, All The Blacks Are Men, But Some Of Us Are Brave: Black women's studies*, Feminist Press, Old Westbury, 1982; Angela Davis, *Women Race and Class*, Random House, New York, 1981; Bobbi Sykes, 'Black Women in Australia: A history' in *The Other Half*, Jan Mercer (ed), Penguin, Ringwood, Australia, 1975. For feminist analyses which take up the challenge of developing a feminist theory and politics which can account for and oppose other forms of oppression than those based on sex, see eg Iris Marion Young, *Justice and the Politics of Difference*, Princeton UP, Princeton, 1990; Elizabeth Spelman, *Inessential Woman: Problems of exclusion in feminist thought*, The Women's Press, London, 1988 (especially Chapter 5, 'Gender and Race: The ampersand problem in feminist thought'); Mary O'Brien, *Reproducing the World: Feminist theory and politics*, Westview Press, Boulder, 1989; Diane Bell and Topsy Napurrula Nelson, 'Speaking About Rape is Everyone's Business' (1989) 12:2 *Women's Studies International Forum* 401-416; Aída Hurtado, 'Relating to Privilege: Seduction and rejection in the subordination of white women and women of color' (1989) 14:4 *Signs: Journal of women in culture and society* 833-855.

<sup>5</sup> Although the Federal Affirmative Action (*Equal Opportunity for Women*) Act did not come until 1986, a policy of affirmative action was recommended earlier - for example, in Peter Wilenski's 1977 report on the NSW public service, *Directions For Change: Review of NSW Government - interim report* Sydney: NSW Government Printer.

<sup>6</sup> On the conventional distinction of feminism into "socialist", "radical" and "liberal" strands, see eg Hester Eisenstein, *Contemporary Feminist Thought*, Allen and Unwin, Sydney, 1984; Zillah Eisenstein, *The Radical Future of Liberal Feminism*, Longman, New York, 1981 (which also draws attention to other orientations, including anarchist and black feminisms). More recently, some commentators have added the category of "postmodern feminism"; see eg the four-strand model of Vanessa Farrer, "Gender and Patriarchy" in *Politics of Australia*, Rodney Smith (ed), (3rd Edition) Allen and Unwin, St Leonards, 1997, pp 252-268; see also Linda J Nicholson (ed), *Feminism/Postmodernism*, Routledge, New York, 1990. On the distinctive political strategies and gains of different strands in Australian feminist politics, see eg Elizabeth Hill, "Working Within the System: The Women's Electoral Lobby fifteen years on" Unpublished Honours Thesis, Department of Government, University of Sydney 1987; Marian Sawer and Marian Simms, *A Woman's Place: Women and politics in Australia*, (2nd Edition) Allen and Unwin, Sydney, 1993.

Australian feminism has been its so-called "femocrat strategy", the attempt to gain footholds for women in government and bureaucracy<sup>7</sup>; a move which reflects, among other things, substantial optimism about the progressive potential of formal political institutions<sup>8</sup>.

Yet, if the "liberal feminist" tradition has been ascendant in at least the public face of Australian feminism, Australia is also distinctive for the degree of interweaving of different feminist strands which has characterised both policy and practice. While the radical, socialist and liberal strands of the feminist movement in the period of the 1970s and 1980s often pursued discrete strategies with discrete goals, there was also considerable overlap not only of strategy but even of personnel between the various strands. For example, Anne Summers, a pioneer of such classically "radical feminist" strategies as "squatting" in empty buildings to turn them into women's refuges, was also the second incumbent (after Elizabeth Reid, appointed in 1973) of the quintessentially liberal feminist office of Prime Minister's Adviser on Women's Affairs.

Certainly, individuals may revise their positions over time, so the involvement of the same people in different kinds of activities does not necessarily indicate ideological continuity; nevertheless, it may indicate that women have had to recognise the importance of compromise and cooperation in order to achieve limited gains in an often hostile environment. Beyond overlaps in personnel, we may note the convergences in policy which marked the early period of second wave feminism in Australia. The Women's Electoral Lobby, "working within the system"<sup>9</sup>, pursued the typically "liberal" strategies of lobbying politicians and appealing for strategic voting; but it did so to achieve a broad church of policies, extending well beyond liberal feminists' traditional "public sphere" commitments to embrace such "private" issues as abortion on demand, free contraception and round-the-clock free childcare<sup>10</sup>. Consequently, while it is useful, for analytical purposes, to identify separate strands in Australian feminist theory and practice, the degree of convergence should warn against any too-easy demarcation or sectarian rigidity.

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<sup>7</sup> Eg Farrer, above, n 6, Sawer and Simms, above, n 6, Hill, above, n 6.

<sup>8</sup> Whereas so-called "classical liberals" enshrine suspicion of the state and a corresponding commitment to small government as essential liberal tenets, liberal feminists' willingness to rely on the state's institutions to further their goals reflects a position at the "welfare" end of the liberal spectrum.

<sup>9</sup> Hill, above, n 6.

<sup>10</sup> Patricia Grimshaw, et al, *Creating a Nation*, Penguin, Ringwood, Australia, 1996, p 303.

### Affirmative action and liberal tradition

I have so far placed "liberal feminist" in quotation marks because the sense in which this strand of feminism relates to a wider liberal tradition is by no means self-evident. At times, indeed, "liberal" seems in this context to mean little more than "reformist". At the level of strategy, "liberal" feminism implies a commitment to "working within the system". In that sense, affirmative action's emphasis on the place of women in the public world of paid employment (and, in rare cases, political life: an example is the Australian Labor Party's 1994 move to a quota for a third of winnable seats to be contested by women<sup>11</sup>) appears to place it squarely under the liberal feminist banner.

"Liberal feminism" can also claim more direct links to the mainstream of liberal political thought. First, it insists the gains of nineteenth century bourgeois reforms (right to freedoms of thought, movement, association, religion, property ownership and so on) be extended to women: women are

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<sup>11</sup> Tim Satchell, "Women Cheer Seats Rule", *Advertiser*, Wednesday September 28, 1994. In this case, the affirmative action program was a voluntary undertaking by the party rather than falling under the *Act*. Although greeted with considerable fanfare, by February 1996 the ALP still had only four women in the House of Representatives. Women in the party, dissatisfied with the pace of change, formed Emily's List, an organisation outside the mainstream party structure devoted to promoting female candidates. To date, the ALP still has a considerable way to go to achieve its affirmative action goal of running women in one-third of winnable seats. A cynical view might suggest that commitment to affirmative action has crumbled before the traditions of doing favours for male colleagues; a more charitable reading would be that, given the ALP's already complex balancing act between factions, local interests and Federal concerns, affirmative action was never going to be more than another in the long list of considerations to be included in any preselection battle. While the Federal Coalition made much play of its large number of women in Parliament after the landslide 1996 election victory, achieved without an affirmative action policy, observers were quick to point out that many of these were in electorates which the Coalition would not normally have expected to win. On that reading, the numbers of women on the conservative side can be attributed more to the size of the landslide than to feminist zeal. It is perhaps a tribute to the effectiveness of women when they do get to Parliament that some of these have managed to build on their serendipitous entree, giving the Liberal Party a pool of successful women like Jackie Kelly, who has consolidated her position from struggling marginal seat candidate in 1996 to junior minister after her 1998 return.

In the present Federal Parliament, the major parties' numbers of women are very close: fifteen, or 22.7%, of the ALP's 66 House of Representatives members are women, while the Coalition has seventeen women, 21.25% of its 80 members. With one (male) Independent, the House average for both parties is 21.7%, a significant improvement on the traditional makeup but still, of course, far from representative of the population.

The bigger success story for women has been in the Senate, where the Australian Democrats claim the greatest achievements to date both in getting women to Parliament and in promoting them to positions of leadership (at least in proportion to the party's admittedly small numbers). Democrats point to their lack of 'old-boys' traditions and less adversarial style, rather than an explicit affirmative action policy, as the reason why they presently have more women than men in Canberra and have had more female than male leaders in their twenty-two year history.

to be understood as fully autonomous individuals in the same way as men in liberal political thought.

In the matter of the relationship between individuals and the state, a vexed question for liberalism generally, the situation is more complex. On one hand, liberal feminism's strategic commitment to enshrining protections for women within the mechanisms of the state smacks to classical liberals of dangerous government encroachment on private concerns. The belief it is the responsibility of the state to protect individual rights even to the extent of allowing "big" government has a respectable pedigree in the "welfare liberal" strand of liberal thought<sup>12</sup>.

In this context, we can discern at least three features of affirmative action which seem to point to liberal theoretical underpinnings. First, the establishment of an Affirmative Action Agency by Act of Parliament in 1986 and its reliance (until recently) on the sanction of naming non-complying employers in Parliament bespeak a "welfare liberal" faith in the efficacy of existing public institutions to bring about improvements in women's condition.

Second, attempts to move women into previously male occupations, without necessarily demanding a transformation of those occupations in the process, suggests liberal feminism's emphasis on equality based on similarity rather than radical feminism's sensitivity to difference. Radical feminists would be likely to argue neither women's needs in the workplace nor women's contributions once they get there are exhausted by seeing them as potential substitute men slotting into a workplace produced by and for actual men. While some advocates of affirmative action maintain that getting women into predominantly male workplaces will precipitate change in the work culture, the present numerical focus could be taken to imply a conviction that equality is furthered by the simple fact of women's presence, seeing male and female employees as straightforwardly interchangeable.

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Taking a cue from the *Affirmative Action Act's* definition of discrimination via the *Sex Discrimination Act*, a serious affirmative action program for Parliament would have to take into account not just numbers of women preselected for winnable seats but also the conditions such as long working hours and variable residence, as well as environmental considerations such as the adversarial climate of party politics, all of which might reasonably be seen as deterring women from political careers.

<sup>12</sup> For a succinct discussion of these two traditions see Alan Ryan, "Liberalism", in Robert E Goodin and Philip Pettit (eds), *A Companion to Contemporary Political Philosophy*, Blackwell, Oxford, 1993, pp 291-311.

Third, this disinclination to challenge wider aspects of work arrangements extends, in liberal feminist thought, to a willingness to accept a general framework of inequality - or at any rate, to see general issues of inequality as separate from the struggle to achieve a representative distribution of women within the existing structures of work. In that respect, liberal feminism reflects the general liberal suspicion of prioritising equality over freedom, even when the particular interpretation of freedom paradoxically means some individuals have their choices constrained by disadvantage. Here again, affirmative action shows affinity with wider liberal tradition. It implies a degree of complacency with existing structures through its acceptance of a broad framework of inequality, insisting only that women must achieve fair levels of representation in the upper echelons and are not over-represented in the lower. Affirmative action invites feminists to direct their struggles towards ensuring that, whatever other hurdles (such as race, class, or limited educational opportunity) might litter the professional steeplechase, at least no glass ceiling prevents women - some women - from making up a representative proportion of the successful few. Socialist and radical feminists, by contrast, would want to challenge the idea that anyone deserves to be a millionaire owner of inherited wealth, or a company chief executive drawing a seven-figure salary - or an underpaid cleaner or monotony-bound assembly line worker.

#### **Affirmative action's radical potential**

Despite the affinities between affirmative action and various strands of liberal thought, its position in the constellation of theoretical and strategic approaches is not as straightforward as the foregoing comments suggest: its origins suggest a more varied theoretical underpinning. Gretchen Poiner and Sue Wills point out affirmative action's current emphasis on statistical verification of the representation of women in various employment strata, a technique which tends to narrow the meanings of discrimination and oppression to a matter of numerical representation, was a latecomer to the development of equal opportunity practice. Feminists' earlier arguments had been mounted on the basis of "a wealth of qualitative analysis" in which women's broader concerns such as problems relating to childcare, the sharing of domestic duties, pressures relating to sexuality and sexual harassment were evident. These "soft" complaints were met with a demand for "hard", statistical evidence to "prove" women's disadvantage. In response to those demands, affirmative action advocates concentrated their efforts increasingly on the provision of numbers, with the result that the eventual *Affirmative Action Act* relies on numerical data on women's presence or absence in

various areas of work as the sole criterion for verifying improvement or deterioration.<sup>13</sup> In the course of this reshaping, the wider concerns characteristic of radical and socialist feminist approaches have been rendered invisible to affirmative action policy and assessment techniques. Nevertheless, affirmative action's historical connection to a wider set of concerns than those now obviously accounted for within it suggests a straightforward categorisation into the liberal feminist basket may be unduly limiting.

Pursuing the trail suggested by this historical hint, we might observe that Poiner and Wills's strictures refer to the operations of the Affirmative Action Agency, and in particular to the criteria which it accepts in the annual reports required from "relevant employers". The spirit of the *Affirmative Action Act* ranges more widely than the compliance measures it invokes. The *Act's* definition of "affirmative action program" directs "relevant employers" to develop measures "to ensure that (a) appropriate action is taken to eliminate discrimination ... against women in relation to employment matters; and (b) measures are taken ... to promote equal opportunity for women in relation to employment matters".<sup>14</sup> "Equal opportunity" is not defined, but "discrimination" is defined by reference to the Commonwealth *Sex Discrimination Act 1984*. The 1984 *Act's* concerns go well beyond numerical representation of women at different levels of the paid workforce, to proscribe discrimination on the grounds of sex, marital status, pregnancy, childcare or family and domestic responsibilities,<sup>15</sup> and to prohibit sexual harassment.<sup>16</sup>

While these are matters with which liberal feminists are concerned, they are also matters of concern to feminists in the socialist and radical traditions, who attach to them interpretations transcending the liberal vision. If the more radical readings of these concerns were taken as the guiding principles for affirmative action, the effects would reach well beyond the arguably insipid version of "equal opportunity" enshrined in the numerical approach.

Margaret Thornton points out the *Sex Discrimination Act* is restricted to the worlds of education, paid work and related areas such as provision of services; it "does not operate within the private sphere in the character of family". While the *Act* gives as one of its goals "to promote recognition and

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<sup>13</sup> Poiner and Wills, above, n 4, pp 52-54.

<sup>14</sup> Section 3(1).

<sup>15</sup> Section 14.

<sup>16</sup> Section 28 A, B and C.

acceptance within the community of the principle of the equality of men and women", the exclusion of family, in Thornton's view, "reveals one of the specified objects of the *Sex Discrimination Act 1984* (Cth) to be little more than political rhetoric".<sup>17</sup> She further points out sexual harassment is proscribed at work but not - say - on the street, implying that such "private" behaviour is beyond the competence of the state to control.<sup>18</sup>

These objections are important: I agree with Thornton that women's rights within the family and in everyday, informal interaction require stronger legal formulation. Indeed, Australian law over the last decade or so has to some degree reflected this need. For example, various states have introduced rape in marriage legislation, precedents have established wider-ranging defences for women who strike out at violent partners and anti-stalking laws protect women from at least the most extreme forms of street harassment.

I wish to suggest that, beyond such specific reforms, the pairing of the *Affirmative Action Act* with its interpreting text, the *Sex Discrimination Act*, may offer more than Thornton allows. Working within present political realities, it may be useful to push the existing *Acts'* theoretical and practical potential. This might lead us to conclude that the behaviours which the *Sex Discrimination Act* does prohibit are sufficiently far-reaching that a serious enactment of it would work the other way around from the pattern Thornton suggests.

Where Thornton laments the *Act's* incapacity to extend its proscription of sex discrimination into private life, an interpretation which genuinely made workplaces accommodating to employees with childcare or family responsibilities might erode the distinction between "public" and "private" realms by bringing more of "private" life into the spaces previously designated "public". So integral is women's unpaid domestic work to the functioning of a capitalist economy and so great are its demands in terms of the time and energy differentially required from women<sup>19</sup> that any realistic

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<sup>17</sup> Margaret Thornton, "The Public/Private Dichotomy: Gendered and discriminatory" (1991) 18(4) *Journal of Law and Society* 448 at 453.

<sup>18</sup> Thornton, above, n 17, p 451.

<sup>19</sup> For surveys of data on women's unpaid domestic labour, see Beth Anne Shelton and Daphne John, "The Division of Household Labor" (1996) 22 *Annual Review of Sociology* 299-322 and Sophie Bowby, Susan Gregory and Linda McKie, "'Doing Home': Patriarchy, caring and space" (1997) 20:3 *Women's Studies International Forum* 343-350. For different perspectives on the interpretation of such figures, see Meg Luxton, "The UN, Women and Household Labour: Measuring and valuing unpaid work" (1997) 20:3 *Women's Studies International Forum* 431-439 and Elisabeth L'Orange Fürst,

attempt to ensure this did not interfere with women's equal participation in paid employment would indicate nothing less than a thorough-going integration of paid work with childcare and family responsibilities. Measures might range from the provision of free workplace childcare (and perhaps schools, to avoid the difficulties of before- and after-school care in a different location to the school) to the provision of work arrangements sufficiently flexible to allow paid work to be carried out in a variety of locations or those requiring care to be accommodated at the carer's work. Then, since caring for someone while also doing paid work would still place a differential burden on the probably female carer over a worker without such responsibilities, strategies would have to be adopted to ensure men took up an equal share of these tasks. Alternatively, reducing the discriminatory burden on women might mean setting up some other system by which the domestic and family responsibilities currently carried out for free by women were transferred to the formal economy at government or employers' expense. (An attractive prospect: your employer having to provide you with a house cleaner. But unlike the existing system, where sufficiently wealthy households can purchase this service for themselves, effectively transferring the double burden of paid and unpaid labour from middle- and upper-class women to working-class women, the house cleaner would also have to be provided with a house cleaner).<sup>20</sup>

Similarly, "eliminating discrimination against women", as required in the *Affirmative Action Act*, presents a sweeping challenge when "discrimination" is defined by reference to the *Sex Discrimination Act*. To take the two *Acts* seriously together would mean, for example, employers' attention would have to be directed toward the "elimination" of sexual harassment. Punishing harassers may have reduced the prevalence of harassing behaviour; but "eliminating" would surely involve a much more far-reaching approach which addressed not just particular behaviours but also the conditions of unequal power in which sexual harassment arises. Altering the preconditions for sexual harassment might include, among other things, greater attention to workplace democracy and a levelling-out of salary differences, perks and status markers between higher- and lower-level staff. If the examples of discrimination and sexual harassment were given the broader interpretation

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"Cooking and Femininity" (1997) 20:3 *Women's Studies International Forum* 441-449.

<sup>20</sup> The economic liberal response to such a proposal would be, of course, that increasing the burden on employers in this way would limit the number of jobs. Affirmative action proponents might then respond that to speak of women as free competitors in the market without such supports is meaningless: affirmative action, in that case, becomes a criticism of the "free" market, another indication of its greater affinity with left-wing ambitions than might at first appear.

I am suggesting, and which, on that reading, the combination of the *Affirmative Action Act* and *Sex Discrimination Act* may even be taken to require, workplaces would be thrown into such a thoroughgoing process of change that the results would lead away from liberal comfort with existing structural arrangements and closer to something resembling a radical feminist rethinking of the whole public-private distinction.

In the current economic and political climate, the examples I have developed are plainly utopian. Their purpose is to illustrate the possibility that the *Affirmative Action Act*, currently interpreted in the narrowest of market-oriented terms, may be gradually pushed towards a more inclusive and far-reaching interpretation through its definition by way of the *Sex Discrimination Act*. My point here can be understood as the obverse of Zillah Eisenstein's argument in *The Radical Future of Liberal Feminism*.<sup>21</sup> Eisenstein's project is to identify radical potential within liberal feminist theory. She suggests the USA's National Organisation of Women (NOW), inspired by liberal feminism, finds itself demanding programs whose character is more radical than liberal. She argues from this that the theory needs to be revised to make more explicit its radical ramifications. The disjunction which she sees between liberal theory and radical program is summed up in her caution:

Without a careful examination of the theory that underlies the basic commitments and goals of NOW and a rejection of its outworn liberal-individualist-legalist view, I think it will be impossible for NOW to fully act on its own progressive forces.<sup>22</sup>

By contrast, I want to suggest that even such a quintessentially liberal policy as affirmative action, frequently criticised from the left for its accommodationist and individualist flavour, can nevertheless be read as harbouring an unrealised radical potential.

We can see this in more detail by considering the instructively related position of Val Plumwood. She considers feminism's historical love-hate relationship with liberalism, arguing that liberalism both offers a philosophical foundation for individuals (including women) to claim individual rights, and yet, through the public-private distinction, rests on the privilege of a particular kind of individual, "the Man of Property".

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<sup>21</sup> Above, n 6.

<sup>22</sup> Above n 6, p 196 (emphasis in original).

Consequently, feminism stands in an ambiguous relationship to the tradition which provided the conditions for its emergence:

Feminism is a liberal Pandora, releasing into the household-private the virus of the democratic imaginary; once released there, this virus must go on to invade the whole of the sphere from which the label "private" excluded it.<sup>23</sup>

For Plumwood, liberalism avoids its Pandora's potential by naming "private", and thus exempting from democratic scrutiny, the twin areas of family (private life) and production (private sector, private economy). Further, "the "privacy" tag keeps these two spheres distinctly apart and allows the privatised economy to avoid acknowledging the household".<sup>24</sup> Far reaching change is realised by bringing an aspect of the public world - a political commitment to mutuality, power sharing and equality - into the previously private domain.

If read as I am proposing, affirmative action, as a workplace-oriented measure, suggests a complementary movement in the opposite direction. Rather than bringing democracy into the private, it would bring aspects of the previously private - childrearing, family responsibilities, the dynamics of sexual power relations to name a few - into the public, where appeal to public standards of equality and justice is comparatively uncontroversial.

#### **Even imperfect bathwater can still hold a baby**

Taking this broader view of the potential of feminist, including liberal feminist, critique, one can acknowledge that affirmative action's implementation tends to bear out the strictures of those feminists who criticise it for being insufficiently far-reaching in a world of multiple inequalities. At the same time, when read in conjunction with the *Sex Discrimination Act 1984*, its underlying concerns are (potentially or actually) ones with which feminists from a range of theoretical positions can be in sympathy.

I am suggesting, then, that although affirmative action finds its dominant theoretical expression in the constellation of ideas usually associated with liberal feminism, yet elements of both its history and its current existence

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<sup>23</sup> Val Plumwood "Feminism, Privacy and Radical Democracy" (1995) 3 *Anarchist Studies* 97 at 113.

<sup>24</sup> Plumwood, above, n 23.

suggest possible readings which allow greater resonance with other strands of feminist theory. In particular, a broad reading of the *Affirmative Action Act's* mediation through definitions of discrimination in the *Sex Discrimination Act* can imply a greater emphasis on concerns with sexual difference than the conventional category of liberal feminist thought would necessarily be expected to accommodate. In particular, I suggest the emphases of "similarity" and "difference" typically associated with liberal and radical feminism respectively, are not as watertight as the conventional categorisation would imply. That is, affirmative action seems, on its present implementation, to be predicated on the assumption women can enter the workplace as fully-interchangeable substitute men; but it carries within it dynamics which would require recognition of the obstacles at many levels, from the "private" to the "public", which impede women's full participation in the public sphere. This would bring with it, in turn, recognition of the range of contributions which women can make to public well-being which are not exhausted by their ability to fill the same slots as men in identical ways.

As affirmative action faces each new round of right-wing criticism, whether for bestowing undeserved "special privileges" on the previously disadvantaged or for failing to live up to an ideology of competition, it deserves to be defended, not only for the gains (however limited) which it achieves for women now, but for the more radical potential which it carries in its belly. At a time when more overtly radical proposals are unlikely to gain official support, a Trojan horse may be one way to keep a more radical agenda within call.