

NEW ZEALAND

INTRODUCTION

The manner of the settlement of New Zealand up to the middle of the nineteenth century, and the pattern of migration which it has since pursued, has resulted in the creation of a nation in which the dominant pakeha group is homogenous and strongly British. The Maoris, decimated by the diseases which the settlers brought with them, and defeated in the struggles to hold on to their land, have only since the middle of this century begun to grow again in numbers. With the increase in immigration of South Pacific islanders, the non-pakeha group is again a significant presence in New Zealand. Aided by changed attitudes and heightened awareness of human rights, they are becoming integrated into the society. This integration has come too late to have any effect on the political, legal or judicial institutions of this country, all of which derived from the British model.

The people who colonized New Zealand came, with very few exceptions, from the British Isles and from British overseas colonies, mainly in Australia. They tended to come from a very narrow stratum of British society - the upper levels of the working class - and they brought with them the attitudes, behaviour patterns, interests and concerns of that group. M.G. Vosburgh in her study, 'The New Zealand Family and Social Change' noted that 'From the beginning it was clear that what the colonists were seeking were better living standards and greater economic security'. She goes on to point out that "... equality and security became, and have continued to be, dominant New Zealand values". Much of the social history and the social legislation of the country reflects these values and these concerns.

The creation of social legislation of a distinctive New Zealand character was aided by its early and rapid achievement of responsible government. The strong provincial governing bodies of the early years of settlement lost their political power soon after the establishment of a central government. They were abolished in 1876. Since that time, a strong central government has become a marked feature of the political life of the country. Though New Zealand became a Dominion in 1907, it was not until the early 1950's that it became a separate state under the provisions of the Statute of Westminster. It had in all other respects been a separate state for decades before that. While ties with Britain remained strong, and immigrants from there, continued to come in a small but steady stream, a distinctive New Zealand way of life, economic, political and social had during that time taken shape.

That no extremes of wealth or poverty emerged among the colonists was very largely due to deliberate government policy. Dairy, wool and meat production early became important elements of the country's economy, but assistance to poor farmers and taxation policies prevented the growth of very large farms. In the recession that followed the boom period of the 1870's, the plight of the urban poor attracted the attention of the government. Schemes of insurance against sickness, poverty and old age were formulated. Positive steps to improve labour conditions in the cities resulted in legislation specifying conditions of work and employment, and setting up Industrial Conciliation and Arbitration tribunals on which both workers and employers were represented. The Old Age Pension Act of 1898 was the first piece of social legislation of its kind in any British colony, including Britain itself. As years passed, similar provision was made for other disadvantaged groups and the range of benefits widened. It was the foundation stone of the imposing edifice of welfare legislation that New Zealand has created.

With a population of just over three million, with plenty of land space and growing industrially, New Zealand is well placed to act as a laboratory for social experiment. The forms that such experimentation take spring from the very strong values inherent in the society. These could be summed up as the importance of securing for all better living standards and greater economic security within the context of promoting the welfare of families. Legislation introducing no-fault accident insurance which compensates victims and a whole new approach to the handling of family breakdown are the most recent expressions of these continuing concerns.

Population Characteristics

The population of New Zealand has grown very slowly during the last twenty years. The birth rate is low, currently at about 16.3 per thousand. This coupled with a migration rate that has been negative during the latter years of the 1970's, has resulted in a growth rate of less than one per cent over the last decade. This small, stable population makes the achievement of social goals much easier than it would be for countries with much larger or rapidly growing populations.

In spite of the fact that the economy depends largely upon the proceeds of agriculture, the numbers of persons engaged in farming constantly decrease. New Zealanders are overwhelmingly an urban people. The population in the cities is growing at a steady two per cent per year, and the 1981 census records that over eighty three per cent are now urban dwellers. As in all industrialised countries with low birth rates and long life expectancy, the young are in the minority. It is interesting to observe that the Maoris and the Islanders, after a fairly rapid increase in numbers after the Second World War, are drawing closer to the pakeha group in both birth rates and life expectancy. Free medical care, which for the poor began by the turn of the century and has since been extended to all, may have been largely responsible for this state of affairs.

The provision of education was one of the early concerns of the settlers. In 1877 an Education Act was passed providing free and compulsory primary education for all children. The expansion of education provision at all levels up to university has been continuing government policy. In keeping with the legal equality women began to enjoy in the 1890's they early gained access to university and other training. It is not surprising that the literacy rate has for some time now been recorded as ninety-nine per cent.

The pakeha population with its emphasis on equality and with its high social mobility has for long enjoyed a considerable degree of homogeneity. The social indicators would seem to suggest that Maoris and South Pacific Islanders are moving towards the same standards of living and of education and, by these routes, the possibility of real integration.

In the 1960's there was considerable expansion of the urban industrial base of the economy. It was a time of full employment, and the number of women, married and single, at work outside the home, grew appreciably. Social security benefits proliferated, firmly establishing the welfare nature of the state. The strongly centralised government makes possible the creation of this kind of welfare infra-structure, and is, in turn, strengthened by it. Major policy decisions are all taken in Wellington and administered from there. Even though grumbles may be heard that New Zealand is "over-governed", the demands made on the government will ensure that power remains strongly centralised. Vosburgh (p.) remarks: "Ease in obtaining work and the feeling of security engendered by full employment conditions and supported by comprehensive social security measures, were formative influences on attitudes and behaviour patterns especially those of the younger members of society who had not experienced the pre-war depression". Though New Zealand, like

everywhere else, has been hit by recession, no diminution can be detected in the expectation of increased government-provided social security. New lifestyles are emerging, and it is taken for granted that they will be accommodated within a benefit system designed to support traditional ways.

From the later decades of the nineteenth century, except for a short period during the recession of the 1930's, the welfare of the family has been an important determinant of social policy. That this is still so can be deduced from the attention paid to family matters by the Social Development Council between 1977 and the present. During this time they issued a number of discussion papers on a variety of family issues - finance, solo parenthood, coping with large families and family members with disabilities, violence as well as the roles of family members. These were designed to test public opinion on ways of improving family functioning and the delivery of services to families before any fresh legislative or other initiatives were undertaken. The Report of the Family Policy Group of the Social Development Commission - "Families First" - issued in 1981, asserted that the importance of the family as "the cornerstone of New Zealand society" underlined the necessity to give careful and continuing consideration to the impact that any government policy would have upon it.

Families and Households

There has been considerable discussion in recent years about how the word "family" should be defined. Growing numbers of persons are living together and having children without marriage. Single-sex households of persons related neither by blood nor affinity claim that they perform the functions of families, and should be classed as such. Should the family be defined by its composition or by its functions?

Until half-way through this century the single-income earner, two parent family with children was the norm in New Zealand. After the end of the Second World War the protection of individual human rights became a matter of great concern to Western nations. The human rights movement set off a chain reaction. In particular, women and children have been the beneficiaries. Focus on their needs has resulted in legislative protection of their rights and public and private modification of social attitudes. In New Zealand the process can still be seen at work.

Statistics can provide a useful guide to family formation and functioning. The age at which first marriage takes place seems to go up and down with the state of the economy - the marriage age is low when the economy is booming, high when it is in recession. Currently the age is around twenty-three years for women, twenty-five years for men, somewhat higher than it was in the mid 1970's. Marriage is nearly universal. Only about five men and three women out of a hundred of each sex can expect not to be married during the course of their lives. As in most countries with a high standard of living, the birth rate is low, averaging around two children per couple. But these figures do not give any real indication of the growing diversity in family formation in the country.

There are, for example, a growing number of solo-parents. At the last count, one in seven families with dependent children was a solo-parent family. The numbers in this group had shown a 33% jump between the censuses in 1976 and 1981. Of course, solo parenthood, whether as a result of widowhood, dissolution of marriage or having children outside marriage, is not necessarily a permanent status, and many families pass in and out of this state. But at any one time they represent a sizeable group of those families which have dependent children, though they tend to have fewer children than do two-parent families. The survey of households showed that by far the majority of one-parent households were headed by women, though some divorced or unwed men had begun to take on this role.

A number of the two-parent families will have been formed as a result of the re-marriage of one, or both, partners. Re-marriage rates tend to keep pace with divorce rates, though always at a somewhat lower level. Men tend to re-marry more quickly, and in many more cases than do women. Families formed of such unions are liable to strains not normally experienced by the single marriage, two parent family.

The census has shown a significant increase in the number of couples who are childless - an increase of the order of eleven per cent between 1976 and 1981. This would seem to be the result of a large number of people voluntarily choosing childlessness. Some of these will be people who have decided to postpone undertaking parenthood for some years after marriage. A number of studies on women and on the family have shown that women who are working when they get married tend to continue working for some years before starting a family and leaving the labour market altogether or substantially reducing their involvement in it for a period.

Since the Second World War the number of women in the labour force has grown steadily. Even during the recession years this growth has been maintained, though not at the same rate. It is clear that marriage no longer necessarily means permanent withdrawal from employment outside the home. Census figures show that while in 1951 married women formed twenty-four per cent of all women in the labour force, by 1976 their share had grown to fifty-six per cent and is now in the region of sixty per cent. Investigations indicate, however, that the pattern of women's employment is significantly different from that of men. Women tend to work in the service and caring sector as teachers, nurses, secretaries, clerks and in social service and child care, though there are also a significant number in light manufacturing. About a third of them work part-time, fitting their jobs around their domestic duties, especially where there are small children or other relatives needing their care. Work for them seems mainly to be for the purpose of adding to the family income to maintain or improve the standard of living. Even those women who work full-time are reported as receiving, on the average, wages considerably lower than those of men, mostly due to the types of occupations in which they are employed. Their contribution to the family income can also be seen as subsidiary.

The fact that so many married women work does have significant social effects. The two-income family has replaced the single income one as the pattern of the majority of all families. The result of this has been to trigger concern at the different standards of living enjoyed by one and two earner households. In equality-conscious New Zealand there is clearly some feeling that benefit intervention may be necessary to correct what some see as a growing imbalance.

Perhaps the most important change, brought about by women's altered economic status within the family is in the area of roles and relationships both during marriage and after its dissolution. Partners tend in these days to be close together in age, of similar education and social status. Companionship is now a basic value, reflected in the new law governing dissolution of marriage. There is more equality in decision-making. But change in the roles traditionally assumed by men and women in the day-to-day business of family living does not necessarily follow as a consequence, and this has been considered by the Social Development Council as a problem worth looking at.

A significant new group is emerging in the census data - people living alone. Until recently these were mostly the widowed and divorced. Young persons tended to stay in the family home until they married and set up their own homes. But it appears that they are beginning to leave home and live on their own while still single. The trend is most noticeable in men and women in their late teens and early twenties, and again in the late twenties and thirties.

Overall, the change in the composition of households shown in the 1981 census documents the results of a growing freedom of individual choice in styles of living. In spite of this the typical New Zealand family can be said still to consist of a husband and wife with one or more children. But family policy can no longer be confined to serving its needs, but must take account of the diversity that seems now to be firmly established.

Family Functioning - Some Problem Areas

It is usual in discussing problems of family functioning to confine these to certain clearly-defined areas - relationships between partners, or between parent and child, the use and division of family income and property and the enforcement of claims to maintenance. But in recent years one aspect of family functioning has taken on special significance for many countries - i.e. the numbers of children which people have. In most developing countries the concern is to get people to limit the size of their families. In some industrial countries where the birth rate continues to decline, the problem is seen as the reverse of this. During the latter part of this century, the birth rate in New Zealand has steadily declined. It is clear that if the trend continues for another generation, as it shows every sign of doing, numbers would fall below the minimum needed to ensure long-term replacement of the population. This is being seen as a national problem that should be tackled. It is not clear what kind of policy initiatives other than persuasion any government could take to reverse the trend. During the last twenty years the right to choose the size of one's family has become generally accepted as an important human right. The record of social legislation in New Zealand shows the importance attached to securing to women equal rights in a number of different areas as well as acceptance of the duty to ensure the protection of the human rights of individuals. Any attempt to reverse this to achieve a higher birth rate would be unacceptable, and would almost certainly not work to the desired end. It is likely, however, to be a continuing point of discussion in the future.

Two problems have attracted a great deal of attention in recent years - domestic violence and child abuse. These problems are not new: they are as old as recorded history. But what has changed are public and private attitudes towards violence in the family in any of its forms, born of the acceptance of the view that each individual has human rights which should be protected.

The Domestic Protection Act which came into force on March 1 1983 addressed the problem of violence in the home. The provisions in this Act will be looked at in more detail, but it is worth noting here that it goes farther than the usual legislative response to the problem. The Act applies not only to husband and wife or persons living together without marriage and their children, but to other relatives living in the same household. For example, sisters may be protected by its provisions from the violence of their brothers, and parents from the assaults of their children.

Some incidents of child abuse may be covered by the Domestic Protection Act, but legislation protecting children has long been in existence. Child abuse normally falls within the terms of the Children and Young Persons Act, but applying the law has often proved a matter of considerable difficulty. This can be especially so when there are culturally different groups in the population whose patterns of family functioning and childrearing diverge. Even without complications of this kind the diagnosis and management of child abuse is not straightforward. There are medical, social and legal implications. It involves persons trained in a number of different disciplines who may not know a great deal about the practice of each other's professions, as well as people like neighbours, relatives and child-minders. Concern to improve

the identification of children at risk as well as the handling of these cases led to the holding of a symposium in 1979 to explore the problem. A number of recommendations were made, but implementation has been slow in coming. The recommendation that might have been easiest to implement - the removal of care matters arising under the Children and Young Persons Act to the jurisdiction of the newly established Family Courts has not been accepted. It was felt that consideration of this should be postponed until the courts had been operative for long enough for an informed decision to be made on the matter.

The Status of Children Act 1969 abolished the status of illegitimacy for all purposes in the law of New Zealand. Parents who live together without marriage have the same rights and responsibilities in relation to their children as do married parents. In the years since the passage of the Act, there has been a steady increase in the numbers of persons living together, having children and bringing them up outside of marriage. Social as well as legal attitudes have changed. But while the law protects the interests of the children, there has been very little change in the legal position of the partners. A parent with custody of small children may be entitled to be maintained in the interests of the children's welfare. But a claim to a share of goods and property that has been accumulated during cohabitation can only be sustained if ownership or financial contribution to its purchase can be proved. These property disputes can be very contentious matters, and resort to the courts in these matters is bound to grow.

In most Commonwealth countries, much of the time and resources of the courts dealing with family matters is taken up with trying to secure enforcement of maintenance orders. With the growing numbers of children being born out of wedlock in New Zealand - currently over twenty per cent of all live births - it might be assumed that this would also be the case here. The introduction of the Liable Parent Contribution Scheme set up by the Social Security Amendment Act of 1980, which will be described later, appears to have significantly reduced pressure on the courts and the legal services. Enforcement is now an administrative and not a judicial matter, and the effects of the change have been noted in the report of the Legal Aid Board, after the first year of the operation of the Scheme. They reported nearly five thousand fewer requests for legal aid in suits in the domestic area of jurisdiction of the District Courts, and attributed this to the change in enforcement procedure.

One effect that might have been expected from the increase in the numbers of births out of wedlock would be an increase in the incidence of adoptions. In fact, the opposite has occurred. Relaxation of social disapproval and the availability of adequate social security benefits have made it possible for more mothers, even though not cohabiting with the fathers of their children, to choose to keep their children. The nature of adoptions has also changed. The confidentiality that was insisted upon to safeguard privacy of the parties is now considered less important and more open adoption practices have become usual. There has as yet been no change in the law to take account of the change in public attitudes.

Family Law

Reform of family law became a matter of worldwide interest during the 1960's. It began with the UN-generated focus on the rights of the child. Since the family is the single most important unit in the life of the child, legal protection of his rights had to be considered within the context of family duties and obligations. As in other countries, much discussion, consultation and research took place in New Zealand in the 1970's about the directions that reform should take. Based on the results of this, a considerable body of new legislation has been passed between 1976 and the present, and the view of

family functioning which shaped it can be clearly discerned.

Marriage is no longer the crucial factor in the legal definition of the family. The change began with the passage of the Status of Children Act in 1969. By its provisions the relationship of mother and father to their children is determined without reference to the status of the relationship between the parents. The principle of equality of the sexes underlies much of the new law concerning the rights and responsibilities of the partners during marriage and at its dissolution. The whole approach to the breakup of marriage has altered, and this is symbolised by the replacement of the term "divorce" with the less prerogative "dissolution of marriage". The concept of matrimonial fault has gone taking with it all the different grounds for divorce which used to be available. These are now replaced by the single requirement of proof of the breakdown of marriage.

The way the law is administered has changed also with the establishment of Family Courts and the provisions for making counselling and conciliation available at all stages of family conflict. Welfare assistance to ease unnecessary financial stress has also been built into the new procedures. In general, both the new family law and its administration emphasize the paramount importance of the welfare of children.

During Marriage

The majority of people marry, set up their own family homes and have children. Their rights and responsibilities during marriage have been affected by the new legislation, which effectively began with the Matrimonial Property Act of 1976. Its provisions are based on the recognition of marriage as a partnership. It is expected that decision-making will be shared, as is the guardianship and custody of children, and extends, after three years of marriage, to equal shares in matrimonial property unless there were circumstances which would make the presumption of equal shares a gross distortion of justice. The change in the legal approach to marriage can perhaps most clearly be seen in the matter of maintenance. Each partner has a duty to maintain the other if, for any one of a number of stated reasons, that partner is unable to meet his or her reasonable needs. These reasons are as follows - physical or mental disability, the inability to get an appropriate job that pays enough, or being the home-maker and responsible for the care of dependant family members. A claim to maintenance may also be allowed so that a spouse may pursue a course of further education or training. Therefore, unless the facts indicate otherwise, both spouses will be treated as responsible adults with a duty to meet their own reasonable needs.

Normally, questions about what share each spouse should be deemed as having in matrimonial property, or actual division of such property only arise upon separation or dissolution of marriage. Now the interest of each party in such property can be protected while the parties are still living together. For example, if the ownership of the matrimonial home is in the name of one spouse, the other may protect his or her interest by notice on the title. The division of matrimonial property can also be applied for at any time to protect a spouse's share where there is a bankruptcy or wilful waste.

It is not only property rights that are now protected. Mounting concern has been expressed about the victims of domestic violence who were often denied the assistance they could have claimed if their assailants were not family members. The police, understandably, have always been reluctant to intervene in family disputes, particularly when complaints were highly likely to be withdrawn, and their own powers were not well-defined. The Domestic Protection Act 1982 has brought together and added to, the variety of orders which a victim of domestic violence seeking protection may now apply for.

Protection may be sought by means of a non-violence order which permits arrests without warrant. A non-molestation order can be obtained that will protect from violence by forbidding entry to the victim or potential victim's place of residence, or from molestation in the street or any public place or even by telephone. A non-molestation order can be applied for at the same time as an occupation order or a tenancy order, and may be applied for, if needed, where there is a separation order or a separation agreement in force. The making of such orders is dependent upon the court being satisfied that it is necessary for the protection of the applicant or in the interests of the children.

The rights of the person against whom such an order is made are taken account of in the legislation. A person arrested without warrant where a non-violence order is in force can only be detained by the police for up to twenty-four hours. The intention is to provide a time for tempers to cool down and some help obtained, if this is necessary. In order to protect persons, but leave time for a more considered decision on the merits of the case, interim orders can be obtained quickly. Both sides will normally be heard before a final order is made.

Separation

Separation has for many years been the preferred ground for applications for divorce. This, no doubt, influenced the decision on the way the law should be reformed. The only ground for the dissolution of marriage now is that "the marriage has broken down irreconcilably". The proof of marriage breakdown is two years' separation with no hope of reconciliation after counselling and mediation have been tried.

Parties may separate for any of a number of reasons, not necessarily as a step to dissolution of marriage. Rights and obligations in matters such as maintenance, the custody of guardianship of children, the matrimonial home and other property will continue, and it may help to have these sorted out in a separation agreement. This can be useful if both parties want the separation. If it is opposed by one partner, the orderly way to handle it is by applying to the Family Court for a separation order, accompanied by any other order such as a non-molestation order, tenancy, occupation or furniture order that may be necessary.

Normally, where a separation order is applied for, counselling is arranged for the parties to see if their disagreements can be straightened out with help of this kind. This may not be required if there has been violence, or if counselling has already been tried. For a separation order to be granted, the Court has to be satisfied that "there is a state of disharmony between the parties to the marriage of such a nature that it would be unreasonable for them to continue, or resume cohabitation."

Dissolution of Marriage

Proof of separation of at least two years' duration is an essential element in supporting a claim that a marriage has broken down. If there have been during this period, times when the parties have resumed cohabitation in an effort to be reconciled, these will not be taken into account if, in total, they come to less than three years.

Provisions for counselling and conciliation form part of the Family Proceedings Act 1980 which deals with separation and the dissolution of marriage. Either spouse can ask for counselling services to be arranged through the Family Court before the decision to take legal proceedings, or after such proceedings have begun. Since the court has to be satisfied that the marriage has broken down beyond hope of reconciliation before granting a dissolution, it has the duty of helping the

to explore the possibilities of reconciliation through counselling or other appropriate help. The Court's duty also extends to helping couples who want their marriage dissolved to reach agreement on as many matters as possible before a hearing in court. Before an order dissolving a marriage is made, the Court has to be satisfied that proper arrangements have been made for dependent children, or that there is good reason why these have not been made.

Legal aid provision in family law cases throws an interesting side-light on the view the law takes of marriage breakdown. Legal aid may be available in all family matters except the actual application for dissolution of marriage. This serves to underline the responsibility of the spouses for the decision they take to end the marriage. It may also cause spouses to think twice before contesting the application, and steer them toward less adversarial means of dealing with the matter.

Though misconduct is no longer considered in an application for dissolution of marriage, it has not entirely disappeared from the field of family law. A parent's misconduct will not be taken into account in determining the award of custody of a dependent child unless, in the judgment of the court, it will affect the welfare of that child. So far as the division of matrimonial property is concerned, the misconduct of a partner will not normally overturn the equal shares rule in marriages of more than three years' duration. To do so, it would have to be gross misconduct, which had significantly affected the matrimonial property. But the court has a discretion in deciding how the division should be implemented, and misconduct of one spouse might affect that decision.

Matrimonial Property and the Matrimonial Home

The major part of the matrimonial property in most marriages is likely to be the matrimonial home. Other matrimonial property consists of the contents of the home, property acquired before the marriage for that purpose and property acquired during marriage except for that received by one of the spouses as an inheritance or a gift. It had come to be expected that where there were dependent children of school age, the spouse who had custody of them would have exclusive use of the matrimonial home until the children left school. Each spouse would then be entitled to receive his or her share in the property. With the principle of equal shares being enshrined in the Matrimonial Property Act 1976 there has obviously been some reconsideration on this point, and division of shares in the matrimonial home may be ordered even when young children are involved.

The presumption of equal shares in matrimonial property can be displaced if it can be shown that one spouse has made a substantially greater contribution to the marriage than the other. Contribution can take many forms - not just the provision of money or property. The care of dependents and the management of the home will be taken into account. Assistance or support given to the other spouse for the purpose of training or employment will be assessed as contribution.

Matrimonial property now includes superannuation earned from contributions made after the celebration of the marriage. Since the payments of superannuation benefits are likely to take place some years after the dissolution of the marriage, the amount to which a spouse is entitled would have to be assessed. Spouses are encouraged to enter into agreements guaranteeing fair shares in the benefits, and the court may make an order on this basis. The managers of superannuation funds are bound by the court order.

Business or farms are not treated as part of matrimonial property, and there are no rules as to how the assets shall be divided. If the parties do not agree on this, the court will make a decision on the matter taking into consideration the best interests of the parties. It has been noted that the kind of disruption that it had been feared would ensure from the division of farm and business assets has not occurred.

Maintenance

The new approach to the maintenance obligation of spouses during marriage, which has already been described, applies also during separation and upon dissolution of marriage. It is not past services but future reasonable needs which determine the duration and the amount of maintenance awarded. Each party is expected to be able to provide for his or her own needs. Maintenance may however, be awarded, where a spouse's earning capacity has been impaired by household responsibilities, for a period of time sufficient to enable them once again to provide for herself or himself. The amount awarded may take into account the expenses of any training or further education that may be necessary if an appropriate job is to be obtained. Normally, long-term payment of maintenance is not envisaged. It has been described as "rehabilitative" in nature. The only exception is where age and the duration of the marriage makes continued payment of maintenance reasonable and just.

Re-marriage is steadily becoming more common, though men tend to re-marry more often and earlier than women. The number of solo-parent families with dependent children headed by women suggests one reason why re-marriage may be more difficult for women. Since a parent's obligation to support his children remains, no matter what his marital status, a man can find himself with maintenance obligations to two families without the means to meet them. There are limitations which a court must recognise in making an order for the payment of maintenance. A person cannot be ordered to pay an amount which would deprive himself or herself of a reasonable standard of living. This covers provision for the needs of a dependent living with him or her. It becomes obvious then, that where a person remarries, it is the second family which has the prior claim to be maintained. The state then has the responsibility to maintain the first family if the ex-spouse at the head of it cannot do so, though a claim may be made against the other by the State for whatever he may be deemed to be able to afford to contribute.

The new laws regarding maintenance take into account the responsibility of the state to provide long-term maintenance for those unable to maintain themselves, and recognises that the breakdown of marriage may create circumstances in which claims for welfare benefits may be made. Such a situation is described above. Also long-term maintenance will not be required for an ex-spouse on the grounds that the other cannot maintain himself or herself because of physical or mental incapacity, or failure to obtain employment. But parents are still liable to maintain their children up to the age of sixteen, and this can be extended to twenty depending on their educational status.

There will still, therefore, be maintenance orders which may from time to time not be paid. Enforcement through court process has never worked well, with consequent hardship to the recipients. Enforcement of such orders has now become the responsibility of the Department of Social Welfare. The Maintenance Officers have a variety of powers, particularly in relation to wages and property, to assist them, and recent figures issued by the Department of Justice on maintenance recovery suggests that the administrative approach to the problem is working rather better than the judicial.

The Liable Parent Contribution Scheme is another administrative development designed to streamline benefit payment and recovery in the case of the solo parent with dependent children who is entitled to a domestic purposes benefit. There is no longer any requirement that a person seeking a benefit should try to obtain, either by court order or agreement, maintenance from the liable partner. Instead, upon application for benefit, the finances of the liable parent are assessed administratively, and the amount that he would be required to reimburse the state worked out after taking all the circumstances into account. There is opportunity for objection to the assessment, but when it is fixed, it becomes enforceable in the same way as any other maintenance order or agreement. Because this scheme applies to parents, it is assessed on the basis of child support, but this is fixed so as to enable the mother to provide the needed care. In this sense it does not differ significantly from the principles applied in the determination of maintenance in other circumstances. The general feeling that parents should not lightly be allowed to escape from their responsibilities to maintain their children is expressed in the amendment to the scheme which now requires a minimum payment of ten dollars a week from every liable parent unless the serious hardship provision applies.

Children: Guardianship, Custody and Access

Under the Status of Children Act 1969, the relationship of parent and child is determined without regard to the marital status of the parents. Where parents are married, the presumptions about the identity of both parents apply. Where they are not, it is normally the identity of the father which needs to be established. This can be done by a declaration of paternity, a paternity order, by registration on the certificate of birth, admission in proceedings or by being appointed as guardian. The Guardianship Act 1968 provides that both parents are the natural guardians of the child provided that they were married or were living together as man and wife at the time of birth. If they were not living together, the mother is deemed to be the sole guardian, but the father has a right to apply to the court to be appointed or to be declared a guardian.

As joint guardians, parents share the custody of the child and the right to determine how he shall be brought up. This situation continues even when the parents separate, though circumstances may require that a decision be taken about custody, which involves possession and day to day care of the child. Where the parents separate, they are encouraged to come to an agreement about such matters as custody and access for the non-custodial parent. Such agreements if they seem reasonable to court, will normally be approved and made the basis of an order. Where there is no agreement, the court will have to decide. The Guardianship Act now states quite clearly that regardless of the age of the child, there will be no presumption in favour of either parent. The welfare of the child is the paramount consideration in coming to a decision about custody and access. This is obviously an area in which the new counselling and conciliation services available through the Family Courts can be most useful.

Unmarried Partners

The growth in the number of people living together without marriage has been referred to earlier. Though as parents they have the same rights and responsibilities in relation to their child as do married partners, in their rights and duties towards each other, the situation is rather different.

This can perhaps most clearly be seen when a decision needs to be made about the ownership of property acquired while living together. Generally a claim has to be supported by proof either of ownership or financial contribution to its purchase or upkeep. Unless an agreement to the contrary can be proved, an unmarried partner who stays at home to care for the children and do the housework, will not be entitled to share in either the home or its furnishings when there is a separation. The only real protection is an agreement, preferably a written agreement, between the parties. Sensibly, rights and obligations should be agreed before cohabitation begins, but it is very unlikely that such step will be taken by people who are embarking on what most believe to be an open relationship, without strings.

As has been noted above, the law has moved in the matter of the claim to maintenance of an unmarried parent as distinct from an unmarried partner. If such a parent has, or has had, custody of the children of the partnership, a claim can be made against the other parent for personal maintenance. The way the court exercises its discretion to award maintenance in this case is the same as in other cases. It decides whether, taking all the circumstances of both partners into account, it is reasonable, or desirable that maintenance should be ordered.

If the relationship between the unmarried partners can be shown to be "in the nature of marriage", they will be entitled to social welfare benefits in the same way that married persons are. If the relationship does not fall into that category, then the entitlement will be different. For example, a domestic purposes benefit is available for solo parents with dependent children, but may not be awarded if there is cohabitation.

Non-violence and non molestation orders were made available in 1982 to unmarried partners. No-violence orders can also be applied for by persons who are the victims of violence by relatives other than their partners or parents. In this and other ways, it seems that the law is giving greater weight to the realities of the relationships between family members and less to their status.

Social recognition of non-marital relationships has outstripped legal recognition, but there are signs that the courts acknowledge that it is unreal to treat partners as though they were strangers. There has been no change in the law yet, so a more realistic approach depends on judicial initiative.

Family Courts

The Family Courts Act 1980 established a system of family courts in New Zealand. These began to operate on the 1st October 1981. They are an important part of the reform of family law that has been brought about by the various Acts that have been reviewed above. It has long been recognised that amicable settlement of family disagreements will not be achieved by adversarial proceedings in court, and that a better way of dealing with disputes was needed. This the Family Courts aim to provide.

The Family Court differs from the local District Court, of which it is a division, in a number of ways. The formality of a court hearing is reduced to a minimum. Sittings are held in private, and the proceedings are confidential. Every effort is made to achieve some measure of agreement between the parties in the settling of their difficulties, but where this is not possible, the issues and the reasons for decisions should at least be understood by them. Some of the provisions relating to counselling and conciliation have already been described. It is the availability of help of this kind which distinguishes the Family Court.

Larger Family Courts have resident Judges and counselling coordinators; smaller ones are serviced part-time by selected District Court Judges, and there are arrangements to meet the counselling requirements. Couples having difficulties need not wait until their problems are great enough to require a court hearing for their settlement. Either spouse can at any time go to the Registrar of the Family Court, if it is a large one, or a court officer if it is a small one, and ask for counselling to be arranged. The main counselling agency is the Marriage Guidance Council, but help can be obtained from other services such as those offering financial advice, help where there is drug or alcohol abuse, or any other help that may be needed, for example from community or church social services. The hope is that early help may prevent serious problems developing.

As described above, both counselling and conciliation have a part to play when family matters come before the Court. The Family Court Judge can, for example, ask the Registrar to arrange a Mediation conference with the husband and wife to see if a settlement can be reached on such matters as maintenance, custody and access, where the parties cannot reach agreement. He may ask a social worker from the Department of Social Welfare to investigate and prepare a report on the arrangements for dependent children where a dissolution of marriage is being sought. Other reports, medical, social or psychiatric, can be asked for, in circumstances where the welfare of children may be affected. And since the welfare of children is the paramount consideration in the disposal of any matters in which they are concerned, the Judge may appoint a lawyer to represent their interests.

The Court's jurisdiction embraces nearly the whole range of family matters - adoption, guardianship, custody and access, consents for minors to marry, the maintenance of children, of marriage partners and of the unmarried parent of a child, separation, dissolution of marriage, matrimonial property, occupation of the home and non-molestation, and proceedings relating to the establishment of the paternity of a child born out of wedlock. But it does not have jurisdiction over matters arising under the Children and Young Persons Act. Care proceedings, child abuse and the like, though eminently family matters, fall outside of its scope, though the handling of such matters might well benefit from the counselling services of the Family Court. It has been announced that the inclusion of these matters in the jurisdiction of the Family Court will be considered at a future time.

The reaction to the introduction of Family Courts, by lawyers and judges as well as by the public, has been positive. It has been welcomed as a necessary and integral part of the large-scale reform of family law that has been taking place over the last eight years.

Some Observations

It is noteworthy that while the streamlining of the law and procedures relating to the dissolution of marriage has resulted in some increase in the number of dissolutions, this has been less than those opposing "easier" divorce might have expected. It is clear that the less stressful joint application procedure is welcomed. Nearly a third of the dissolutions ordered since the change in the law have been the result of joint applications. It would seem likely that after this first surge, the numbers of applications will, as in the past after each change in legislation, fall back to lower levels, somewhere around six to seven thousand a year.

Notes on the chapter on New Zealand

Acknowledgement is made of the very considerable assistance of the Department of Justice, New Zealand. Most of the material on which this chapter is based was supplied by them.

Statistics were taken from:

1981 Census of Population and Dwellings, Households and Families, Information Release, July 1983.

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Use was also made of papers presented to the New Zealand Demographic Society and appearing in Population Review in 1981, 1982 and 1983.

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The following provided useful material:

The Social Development Council Papers

The Welfare State? Social Policy in the 1980's N.Z. Planning Council

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Living Together New Zealand Law Society Mary 1982.

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Legislation referred to in the text;

Adoption Act 1955

Guardianship Act 1968 amended 1980

Status of Children Act 1969

Equal Pay Act 1972

Children and Young Persons Act 1974

Matrimonial Property Act 1976

Human Rights Commission Act 1977

Family Proceedings Act 1980

Family Court Act 1980

Domestic Protection Act 1982

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