CHILDREN'S RIGHTS AND FAMILIES: PROCEEDINGS OF SOCIAL POLICY FORUM 2000

ISSUES PAPER NO. 10

Edited by

STUART BIRKS

CENTRE FOR PUBLIC POLICY EVALUATION
2001

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INTRODUCTION

The papers in this collection arise from Social Policy Forum 2000: Children's Rights and Families, held in Wellington on 26th October 2000. It was the second Social Policy Forum held, the first being "Fathers, Families and the Future", held on 19 April 1999. Papers associated with that forum have been published, along with other contributions, in Issues papers 4 and 6.

In the same tradition as the first forum, the aim on this occasion was to bring together research, practice and policy. The 100 or so attendees were therefore drawn from a range of backgrounds. They included politicians, public sector policy analysts, academics, and representatives of grass-roots and voluntary organisations. The organising committee was also drawn from these diverse backgrounds. Support and funding was provided by the Father and Child trust, Wellington, the Department of Child, Youth and Family Services, and the Centre for Public Policy Evaluation at Massey University.

A third Social Policy Forum is planned for 2001.

The theme for the 2000 Forum was "Bringing together research, practice and policy to give meaning to the UN Convention on the Rights of the Child: Article 18".

Article 18:

1. *States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.*

2. *For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to the parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.*

3. *States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.*

This volume contains the addresses by Hon. Steve Maharey and Hon. Laila Harré from the government, as well as that of Muriel Newman, an ACT MP noted for her private members bill on shared parenting who kindly stepped in at short notice. Unfortunately we do not have speech notes from Sue Kedgley, a Green Party MP who also spoke.

The keynote address was by Ian Shirley, who set the scene for later discussion. Papers were then grouped around four themes. Sarah Farquhar and John Brickell focused on children. Robin Fleming and Harald Breiding-Buss then considered the wider context of families. They were followed by Mark Henaghan and Stuart Birks addressing aspects of family law and the state. John Waldon highlighted the importance of institutional factors in a case study related to Maori health.

Chapter One

FIT FOR PURPOSE - GETTING FAMILY LAW RIGHT[1]

by Steve Maharey[2]

GOVERNMENT COMMITMENT TO FAMILIES

Many Governments insist that the family is the most important social unit but they have given little practical or financial support to their assertion.

This Government came into power with a commitment to a real investment in families.

When the first Labour Government established the welfare state its fundamental objective was to protect people against predictable crises. And it did – then.

Now our task is to create a welfare state that can help people to negotiate the unpredictable; which seems to be one of the defining characteristics of life in the 21st Century.

And that includes the changes to the traditional family structures – and the steady growth in one-parent and reconstituted families.

You are gathered here today with a common concern that was undreamed of when Michael Joseph Savage was Prime Minister. You are here because you are concerned about the New Zealand children who are growing up without the special support and guidance of a loving father.

I am here to reiterate the Government commitment to your concerns – to ensure that legislation and policy are relevant to the changed and changing circumstances of families, and to promote the importance of the roles of mother and fatherhood.

GOVERNMENT GOALS

Government goals include:

- Enhancing the wellbeing of children and young people, maximising their opportunities, recognising their rights and interests;

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1 Speech notes

2 Hon. Steve Maharey, Minister of Social Services and Employment, Associate Minister of Education, Minister for the Community and Voluntary Sector

- Support parents and others to carry out their responsibilities to their children;

- Providing a policy and legal framework which allows for the diversity of family types and cultural beliefs and practices; and

- Providing a policy and legal framework which facilitates the range of ways in which parents and others carry out their responsibilities to their children

Our view is that current New Zealand child and family legislation does not necessarily best serve the implementation of these goals. Nor is it appropriate to the changing nature of family structures or the cultural realities of New Zealand's diverse population.

The paradigms underpinning the Adoption and Guardianship Acts for example are largely those of European society operating within the dominant social construct of a two-parent family model.

Legislation saw demand for adoption and guardianship resolution as arising from exceptional circumstances rather than as a normal expression of changing family dynamics and social mobility. Accessing these two pieces of legislation was seen to represent a relatively atypical situation for adults.

This situation differs from the current and projected realities of life for the families of many New Zealand children now and in the future. There is some urgency in developing a more flexible legislative framework, one that fits the current and projected social reality and a culturally diverse society.

Apart from anything else there is no consistent statement of Government's commitment to the care of children evident in the current legislation.

The time has come to look at the current functions of the Adoption Act, the Guardianship Act, the Child Support Act, and the Family Proceedings Act with the aim of establishing an integrated body of law relating to the care, custody and guardianship of children.

AMENDMENT OF GUARDIANSHIP ACT

The review of the Guardianship Act is part of this overall child and family policy.

Our current Guardianship Act was passed over 30 years ago. It no longer meets New Zealand families' needs. It certainly does not meet the needs of fathers who become separated from their children because their relationship with the mother of their children has disintegrated. Neither does it meet the needs of children who want, need - and deserve to develop with the friendship and guidance of their father.

The evidence both here and overseas is overwhelming – that children deprived of loving fathers are disadvantaged children, whatever their socio-economic circumstances.

This Government is committed to change things for children in New Zealand - to ensure that there is no unjustified impediment to continuing family involvement by fathers, or any member of a child's extended family, if the primary relationship between their father and mother fails.

DISCUSSION PAPER

We released a discussion paper on guardianship, custody and access arrangements in the middle of August. It looks at the Government's goals for family policy and raises a number of questions about what we would like from our law on guardianship, custody and access for our children and young people.

Since you are clearly interested enough to attend this forum I am asking you now to please read the discussion paper and to submit your thoughts on the issues that the paper raises.

Government wants:

to ensure that children receive adequate and proper parenting – so that they are able to achieve their full potential;

to ensure that both parents are able to fulfil their responsibilities to children; and

to recognise in law and to maintain the important relationships that children establish within their wider family/whanau.

We need to know what you think should be the basic goals of our laws about guardianship, custody and access.

There are several issues in the current law which we definitely need to look at, and to change. They are:

- *The language* – which as it stands, sounds like property law.

  Custody is defined as "the right to possession and care" of a child. Guardianship includes "the right of control". This is not the language of parenting. It is dehumanising – and we all know that the employment of dehumanising language is one of the subtlest but most powerful weapons of war.

  So it is not helpful to use this kind of "winning" and "losing" language when relationships are already fraught – and where children are involved. The language must be changed and we would like your thoughts on this.

- *The current emphasis on parents' rights* - Most of the current legislation focuses on the custody and access rights of the parents.

  We think that a refocus on the rights of the children might clear the thinking of adults who are self-absorbed in the hurt and misery of their relationship breakdown. This is a situation where people can forget the consequences for the children in their determination to score points against their ex-partner.

  We want to change the law to ensure that the best interests of the children are the prime focus.

- *The imbalance of parental rights and responsibilities* – while the law says that both parents (usually) have equal rights and responsibilities regarding major decisions for their children, the reality is that the children usually live with one of the parents for most of the time.

  In this situation it is often easy for the custodial parent to plead pragmatism – "you weren't available" – "I had to make a decision today" – to exclude the other parent from important decision-making on behalf of the children.

- *Recognition of wider family/whanau and cultural diversity* – often, under the current legislation, the break-up of the parental relationship, and the surrounding acrimony, can deprive a child of contact with other family members.

  Yet the relationships that children forge with their favourite aunts and uncles are extremely important for the long-term welfare of a child.

  Aunts and uncles are often the loved and trusted adults in a child's life who can bring a more objective view to a child's circumstances in times of strife.

  In times of difficulty a child may feel more comfortable about telling an aunt or uncle what is wrong, or how they feel, than they will telling their Mum or Dad.

  I know that one of the first requests that experienced Child, Youth and Family youth justice co-ordinators make of families illustrates this. If the young miscreant is being sullen and difficult, the co-ordinator will ask for their favourite auntie (or uncle) as the case may be, to be brought in. More often than not the young person will open up to that person.

  Aunts and uncles can often exert a positive and guiding influence that parents and grandparents may be too emotionally close to manage when the going gets rough with children.

I think I can safely say that this is the situation whatever the culture of the child. It becomes doubly important, however, to Maori and Pacific families wherein the extended family is central to the child's nurture.

The current legislation has only very limited provision for access rights to be given to members of the wider family whanau - and it must be changed to enable our children to maintain their own contacts with the significant adults in their lives.

LEGISLATIVE OPTIONS

There are some interesting ideas floating around and we want your input.

For example, the Law Commission Report on adoption law, which we are reviewing, has recommended a care of Children Act stating the responsibilities and rights of parenthood. The concept has been scoffed at by some – the headlines were of the 'Rules For Parenting!' variety. Opposition party members have remarked that the Commission report is driven by "political correctness and ideology" – because the report recommends that government remove the current ban on allowing single men to adopt female children, and allowing de facto and same sex couples to adopt.

This is obfuscation. The Law Commission Report clearly states that the welfare and interests of the child will be the main focus when considering any issue under the proposed legislation.

I think that we all have a lot to gain by putting in some overarching legislation like the proposed Care of Children Act. The current provisions for the care, custody and guardianship of children are scattered through five different pieces of legislation developed over the past 45 years.

The Children, Young Persons, and Their Families Act is pioneering, family-focussed legislation which has been studied, and copied in numerous other countries. But the Guardianship Act 1968, the Adoption Act 1955, the Child Support Act 1991 and the Family Proceedings Act 1980 do not recognise the diversity of New Zealand families or the role played by members of the wide family group in the lives of children.

I think also that the United Nations Convention on the Rights of the Child (UNCROC) which we ratified in 1993 is an appropriate foundation for any legislative relevant to children. The government is also committed to supporting Maori communities to develop their own policy, planning and programme delivery capacities. Only the Children, Young Persons, and Their Families Act provides a clear framework for this development. Other current legislation does not.

Any new child and family legislation needs to be developed to guide all parties in a way that is acceptable to Maori.

QUESTIONS RAISED IN THE DISCUSSION PAPER

If you have not already done so, get hold of copies of the Law Commission report and the discussion paper on the Review of the Guardianship Act. The discussion paper is called Responsibilities for Children –Especially When Parents Part – The Laws About Guardianship, Custody and Access. You can download it from the Ministry of Justice website or get a copy by contacting Kathy Surgeoner at the Ministry of Justice, P O Box 180, Wellington.

I recommend that you do get a copy because it contains questions about the various issues I have presented here and will help you to put some structure around your thoughts on these matters.

THE FAMILY COURT

The discussion paper also covers some of the issues about current procedures in the Family Court – the processes which are currently used for resolving disputes between parents and for enforcing the Family Court's custody and access orders.

As with the current Guardianship Act, the procedures in the Family Court do - despite the very best efforts of the Judges and the Court staff - amount to a bit of a "contest". I am sure that the Family Court judges would agree that it is not uncommon for the cleverest and most determined of the two parties, or their lawyers, before the Court to quote "win" for all the wrong reasons.

Again I am sure that many of you here would like to see changes in the Family Proceedings Act. The paper traverses all of the obvious issues:
The difficulties parents may have with the Court appointed specialists; the social workers, the psychologists, the counsel for child;

The confidentiality of all proceedings in the Family Court which precludes wider public examination of the issues that the Court must rule on;

The delays, and the considerable costs which can be a daunting impediment for many parents; and

The problems enforcing Court orders. Most people who have been through the Family Court would be familiar with this one, particularly in relation to access. If one parent does not co-operate it can be extremely difficult for the other parent to have their rights enforced. And, of course, the process of this can often further exacerbate the relationship tensions– usually at the expense of the children.

Again the discussion paper poses questions to assist you to clarify and compile your views.

Please take the time to read the paper, think about the issues, and send your views in. The Government wants the new legislation to be a clear reflection of our New Zealand family values and the diversity of our culture at the beginning of the new millennium. We can only achieve that with your input.

Thank you.

Chapter Two

ADDRESS TO SOCIAL POLICY FORUM 2000 - CHILDREN'S RIGHTS AND FAMILIES[1]

by Laila Harré[2]

Good morning and thank you for the invitation to take part in today's forum.

The rights of children, particularly within families, is an issue that cuts across both of my ministerial portfolios – Women's and Youth Affairs. What I hope to do today is give you some feedback on the work I have been involved in and explain how it fits into the Labour-Alliance Government's broader aims of modernising social policy in this area.

Firstly, I would like to give you some background on work the Ministry of Youth Affairs has been doing to gather submissions on the government's draft report on the United Nations Convention on the Rights of the Child, of which article 18 is the starting point for today's talks.

To boil it down, article 18 expressly recognises joint parental responsibilities. It states that parents have a common responsibility towards their children. Article 18 also recognises that government should be supporting and promoting the viability of joint parenting.

Most importantly, article 18 is not just about family relationships following the breakdown of a relationship, but about parental responsibility regardless of family shapes.

While looking at article 18 in isolation, it is vital that you bear in mind the key principles of the convention. UNCROC is not a checklist to be ticked off every five years. It sets out standards that we as a community should be constantly working towards achieving for children as a whole. There are four key principles that should be taken into account when considering any particular rights within the convention.

These are:

- Non discrimination, which means the rights of the convention apply to all children without bias.

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1 Speech notes

2 Hon Laila Harré, Minister of Women's Affairs, Minister of Youth Affairs

- Best interests – that in all actions concerning children the best interests of the child shall be the primary consideration.

- Right to life, survival and development – all children have an inherent right to life and state parties should ensure to the maximum extent possible the survival and development of the child.

- Views of the child – all children capable of forming their own views have the right to express those views freely and have them taken into account.

Assuming Ian Shirley's address reflects some of the research on the nature of childhood, today's meeting will be giving serious consideration to this principle. Childhood need not be viewed as a passive time of life. There is much more understanding now of the way children themselves influence family dynamics.

So how do we work to more effectively apply these key principles to children's rights and families, and how do we identify where existing legislation is letting us down?

Right now, the government is involved in two processes that will play a key role in answering this question.

The first is the review of the Guardianship Act, which Steve has talked about in some detail.

The second is our review of the submissions on the working draft of New Zealand's first periodic report on the implementation of UNCROC.

Some of the comments made in these submissions illustrate public sentiment on this issue. Here are some that were made in relation to children's rights and families.

ENCOURAGING PARTICIPATION BY CHILDREN

People felt that where consultation with young people took place, then action needed to be taken on what they said as well. In short, children should be consulted about decisions affecting them, including decisions being made within the family unit.

This feedback is backed up by a recent Otago University Children's Issues centre study that found only 19% of 107 children surveyed had been consulted about initial custody arrangements. By comparison, the overwhelming majority felt their views should have been listened to.

As one submitter to the draft report put it: *"In custody cases, and in cases where a mother was imprisoned, children were not getting a real say in where they'd like to go – so many decisions about children reflect adult interests."*

This is a significant issue, and one that those who advocate a particular parenting option sometimes fail to take into account. It's all very well to talk about the rights of mothers and fathers at the time of a relationship break-up, but too often the language focuses on the rights of parents, rather than children.

And when we are talking about the best interests of the child, legislation does not always make it clear that best interests are generally interpreted as meaning regular contact with parents, and it doesn't even refer to children's rights.

The Ministry of Youth Affairs conclusion is that New Zealand's legislation, particularly family law legislation, does not conform to the principles within UNCROC that cover this area.

So recognition of the need for legislative change has been widespread, coming from government departments, opposition MPs and parents unhappy with the outcome of their own custody arrangements.

THE ROLE OF FATHERS

Three submissions to the draft report dealt with the role of fathers. There was a feeling that the role of fathers as caregivers isn't being given the recognition it deserves.

One submitter suggested that New Zealand follow the Australian example and introduce a philosophy into family law that recognises the shared nature of parental responsibilities after separation – most familiar in New Zealand as shared parenting in the form of a bill that was voted down earlier this year.

The government's decision not to support the Shared Parenting Bill was in no way a sign that it places any less value on the parenting role of fathers. What it does mean is that we are unconvinced that a default position of joint custody when you are faced with a high level of conflict between parents is necessarily in the best interests of the child.

As I mentioned before, existing legislation leaves the definition of best interests of the child open for debate, something that has been reiterated in a submission to the draft report.

In New Zealand we already have what other countries call joint legal custody of children. We call it guardianship, and that has been in place for more than 20 years.

Some 95% of the cases that result in custody applications in the Family Court are settled by agreement, and only 5% of applications actually end up in fully contested proceedings. It is exactly the sort of situations that currently end up in the Family Court where joint custody is less likely to be the best option for the child or children involved.

At this point the decision is not made on the basis of gender. The reason custody is normally awarded to mothers is that they are usually the primary caregiver. If that isn't the case, it's reflected in the court's decision.

Shared parenting is of course an utterly worthy objective. There is no doubt that it is preferable for children to have good strong relationships with each of their parents. But in the context of custody and access arrangements we are not talking about every family. We are talking about the minority who separate, and among those the very small proportion who can't reach an amicable arrangement and require the family court's intervention. We are literally talking about the worst case scenario.

It's also unlikely that parents who have not shared parenting throughout the course of a relationship are suddenly going to divide up this responsibility at the time of separation.

If we are going to have broad-based social policy targeted at children having a good relationship with each of their parents we certainly wouldn't start with the family court – we would start at a much more basic level than that.

Studies reflect the fact that children want to spend more time with the fathers who live under the same roof as them. That is a much better and broader place to start creating a new culture of fatherhood. If it happens there it is far more likely to continue in the event of a relationship breakdown.

The message therefore that I want to underline is that while the current focus has been on fatherhood post-relationship breakdown, my view is that the "solution" to this apparent problem of the failure of child/father relationships does not lie with policy focused around care of children after separation. Rather, it lies with policy focused on the care of children from birth regardless of their family circumstances. Central to this is the way we help parents navigate parenting and workplace responsibilities. Ultimately, a transformation in the role of fathers will also mean changes in a mothers' role.

Thank-you.

Chapter Three

CONTESTED TERRITORY OR COMMON GROUND[1]

by Muriel Newman[2]

I am sure that we all share a common vision of NZ as a child rearing paradise: a country where every child born is nurtured and loved, supported and encouraged to achieve their potential in life, being happy, fulfilled and successful.

In intact and stable families, children have a good chance of doing well. Family breakdowns however, can bring about substantial risks of poor outcomes in life. British research into family configurations and child safety clearly indicate where the risks lie. The contested territory is essentially how we best reduce these risks to children in both practice and in law.

The contested territory is essentially how we best reduce these risks to children both in practice and in law.

My own views have been shaped by seeing each year more and more children at risk – almost 100,000 at the present time – and hearing politicians saying the solution is more money, without ever addressing the underlying cause of the problem … the increase in family breakdown.

The reality is that as long as no fault divorce remains the law, and while it is socially and morally acceptable to have children without marrying, the number of sole parent families will continue to increase.

Unless something is changed, the problem of damaged children will only get worse. And that is why solutions that are merely window dressing will never be effective.

The tragic murder-suicide of Rosemary Perkin and her three daughters is a shocking reminder of the urgency of the need for change to New Zealand's family laws.

Newspaper reports claim that the couple had been in court that morning and that Mr Perkins had been given unsupervised visiting rights with his children.

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1 Speech notes

2 Dr Muriel Newman, ACT list MP, holding portfolios on Social Welfare, Housing, Youth Affairs, Senior Citizens, Communications, Employment, IT

The action, of giving a non-custodial father greater access to his children, was apparently a significant factor in the tragedy. It follows the 1995 deaths of Tiffany, Holly and Claudia Bristol, three children murdered by their father who also killed himself during acrimonious litigation, and a 1997 murder suicide of a mother and her two children.

Recently I spoke to a mother whose son had recently committed suicide. She said he was a loving father who cared deeply about his three children, yet during the five years of separation he had been able to see them only four times. She said the hurt was overwhelming and it would not go away. The family attributes 95% of the reason for his death to the ongoing battles for custody and access.

Those parents lost their son and those children lost their father, all because of our adversarial family law.

Well I say - enough is enough. In a civilised society in the 21st century we should not be condoning laws that cause such damage, hurt and bitterness.

Thirty years ago in the United States, murder-suicides of parents and their children repeatedly made the headlines. When they understood that the negative consequences of sole custody were responsible for the tragedies, legislators acted. They saw that their custodial system took two parents, who in most cases wanted to do all they could for their child, and pitted them against each other.

One became the winner, gaining custody of the child, while the other became the loser, a mere visitor in the child's life. The biggest loser though was the child, for it is the child who walked into a courtroom with two parents and walked out with one.

They devised a change that took the conflict out of family law, and ensured that a child had the right to the love and ongoing support of both their mother and their father, grandparents and extended family as well. Shared Parenting was the fastest spreading family law change ever to sweep through the United States.

Shared parenting is based on the notion that when parents separate or divorce, the children deserve, and in fact have the right, to continue their developmental years with two parents. These parents should be equal in their responsibility for the upbringing of their children, unless there is a compelling reason why a parent is not fit. In such a case where children are genuinely at risk, this bill provides for all of the protections and safeguards of our present sole-custody law.

Everything we know about children teaches us that it is in their best interest to maximise the involvement of both parents in their lives. Children want, love, and need two parents.

Society needs children fully to have their parents. By any measure, children with both parents will usually do better in life than those who have been denied a relationship with one or both. Society picks up the pieces far less often in cases where children and young people have enjoyed the fullest relationship with both their mother and their father.

Of course, that is not to say that single parents fail to try their best, but just as two of anything is more than one, two actively involve parents can provide more physical, emotional, and psychological support than one.

With the tragic consequences of inadequate parenting all around us, we can no longer afford a legal system that discards one of the two most important people in a child's life, their parent.

As a result of this winner-takes-all system, a quarter of all children whose parents separate or divorce lose all meaningful contact with their non-custodial parent. A further 40 percent see that parent for only a few hours every month.

New Zealand currently has the most underfathered generation in the history of the Western World. We lead the world in youth suicide, teenage pregnancy and child homicide.

New Zealand is already one of the industrialised world's leaders in sole parent families. We also lead in youth suicide. More children currently lose a father through separation or divorce in New Zealand every 6 weeks than lost a father through the entire period of the Second World War.

If present trends continue, by the year 2010 half of European and three-quarters of Maori infants under 12 months' old will live in families where there are no fathers. As a consequence of this lack, such children will be vulnerable and at risk of poor outcomes in life from the day of their birth.

The Rt Hon. Sir Michael Hardie Boys, Governor-General of New Zealand, recently stated: “Fatherless families are more likely to give rise to the risk of being abused, of being emotionally, even physically scarred, of dropping out of school, of becoming pregnant, of living on the streets, of being hooked on alcohol or drugs, of being caught up in gangs, in crime, of being unemployable, of having no ambition, no vision, no hope, at risk of handing down hopelessness to the next generation, at risk of suicide."

Laurie O'Reilly, the late Commissioner for Children, shared the Governor-General's passion for children to retain contact with their fathers as a protector, supervisor, a good role model for their sons, and a male relationship model for their daughters.

He believed that our current focus on sole custody alienates fathers after separation or divorce. He wanted to see New Zealand looking towards the type of shared parenting laws

that we see increasingly overseas, laws that keep children in full emotional, physical, and spiritual contact with their fathers as well as their mothers.

Even the judiciary shares concerns that their attempts to solve problems in Family Courts over the last 30 years have created widespread problems in Youth Courts and the criminal justice system. Many young offenders are boys who have become alienated from their fathers, show have been denied that special process of socialisation that only dads seem to be able to carry out. The judiciary want Parliament to re-examine what is in the best interests of children. They are concerned that their historical judgement that stability for a child is one parent and one home, is no longer relevant in the 21st century.

In countries where stability means frequent and ongoing contact with both parents, children are doing better. Shared parenting plans ensure arrangements are tailor-made to suit individual children.

Shared parenting now forms the basis of law in the USA, in France, Sweden, and Holland. Both Canada and Australia are looking at shared parenting, and in Britain a single-issue political party, the Equal Parenting Party, has been established. All countries that are finally facing up to the tragic consequences of widespread family breakdown are moving towards shared parenting.

Since my Private Members Bill on Shared Parenting came before Parliament earlier this year, my office was and still is inundated with tragic stories from people whose lives have been shattered by our present custodial laws. This law, bestows the main power on custodial parents, who are in a position to use an associated arsenal – guaranteed income from the state, legal aid, protection orders and the like – in such a way as to ensure that not only do they retain sole custody, but that they also marginalise the other parent. Many parents, involved in these ongoing battles have been ruined spiritually as well as financially.

One father I know hired a QC for three years and spent over $100,000 so that he can see his children for three days a week. At least he had the money to ensure that his children had the right to have frequent and on-going contact with their dad. Unfortunately, most non-custodial parents do not have the resources to achieve that outcome – and nor should they need to.

I ask you, in a free and democratic society, what right does the government have to deny a child the full support and protection of their dad or their mum, their grandmas and granddads, and other family and friends? What right does the government have to deny good parents the right to frequent and on-going contact with their children?

I cannot imagine anything more brutal than having your children taken away from you, not by war or some other tragedy, but by the law. To quote a psychologist who wrote to me: “families are placed under intolerable stress by the system. People are driven to murder and suicide. The brutalising of families should not be tolerated in this country”.

Family breakdown cuts across race, class and creed. It affects virtually all New Zealanders, either directly or through family, friends and colleagues. It affects all of society.

Sadly for the hundreds of thousands of parents locked in conflict, grandparents alienated from their grandchildren, and children caught up in a viscous crossfire between the two people they love most in the world, the government did not support my shared parenting Bill to a Select Committee.

But Shared Parenting is an idea whose time has come, and a father from Dunedin, Tim Hawkins, paid the $500 to launch a petition to call for a Citizens Initiated Referendum into Shared Parenting. I have pledged my support for Tim's petition, and I know that one day we will win a law change, and New Zealand will become one of the growing number of countries that have shared parenting as the predominant family law.

Chapter Four

THE POLITICAL ECONOMY OF CHILDHOOD[1]

by Ian Shirley

> There are signs that the world is coming
> to an end because children no longer
> obey their parents. The end of the world
> is manifestly drawing near.

That quote does not come from the Commissioner for Children as some of you may suspect but from an inscription on a clay tablet which archaeologists suggest may be some 6000 years old. In a similar vein, a Summerian Professor, some 3000 years ago is alleged to have complained about:

> Wayward, disobedient and ungrateful children
> roaming the streets and boulevards, loitering
> in public squares, hating school and education
> and making their fathers sick to death of their
> everlasting gripes and complaints.

3000 years later it is not difficult to find similar sentiments being expressed. And while these complaints may be an enduring feature of family life (and parenthood in particular) they also reveal deeper concerns that lie at the centre of intergenerational differences.

Despite all the advances made by human populations over the past 100 years, children remain among the most vulnerable members of our global society. Many of the institutions established by countries in the 'developed' world in the wake of the Industrial Revolution, were designed to protect the physical, social and economic welfare of children, with graphic illustrations evident in legislation aimed at eliminating child labour and protecting children from abuse and neglect. Yet today - every day - every 3 seconds of every day -a child under 5 dies (Shirley, 1997).

Even here in New Zealand - surely one of the most favoured countries on earth - the quality of life and the treatment of our children has become a national disgrace. Since 1975 more than 240 children have died from abuse and over the past 10 years we have seen a major

[1] Keynote Address

resurgence in preventable childhood diseases that are usually associated with the poverty and destitution of 'the Third World'. During the 1990's New Zealand recorded the highest youth suicide rate in the industrialised world and during this same decade over a third of our children became dependent upon the State for some form of social assistance. The origins of this 'social deficit' have been attributed to a wide spectrum of factors from failed economic policies, to welfarism, to a decline in family values and parenting skills.

The 'solutions' that have been proposed (especially over recent months) have been equally confusing, no doubt reflecting the diverse interests and priorities of those populations and groups that have a vested interest in 'the child'. Thus predictably, there are demands for more funding, better training, harsher penalties, more discipline, less discipline, sovereignty for Maori and Pacific communities, increasing government support, less government intervention, education in the rights and responsibilities of parenthood, greater parity in the justice process when parents separate, and clarity in prescribing and defending the rights of the child.

It is the latter theme that lies at the centre of today's forum, aimed as it is at bringing together research, practice and policy, in order to give meaning to the United Nations Convention on the Rights of The Child. Having recently completed a report with colleagues at the University of Auckland summarising the international literature on the determinants of good childhood outcomes (Shirley, Adair, Anderson, 1999), I must say that I have serious reservations concerning the United Nations Convention and I have major misgivings with the 'rights industry' especially within the Anglo-American world.

THE POLITICAL ECONOMY OF CHILDHOOD

The underlying assumptions on which these reservations are based become evident when we examine the international literature on the political economy of childhood, especially that literature which places children at the centre of research and policy outcomes.

In one of the few comparative studies of childhood, Goran Therborn (1993) pursues two lines of investigation: law and public policy. Although these fields of study belong to different disciplinary traditions, both provide useful indicators of the dominant beliefs, values and norms of society in which 'the subjects' (children) are excluded from, and totally dependent upon, those framing legislation or enacting public policy.

The two most important factors in the constitution of modern childhood are identified as legislation prescribing compulsory education and laws setting parameters for child labour. A child became someone who had not finished elementary education and was too young to work. These defining legal characteristics were followed by penal laws raising the age of criminal responsibility and regulating sexuality and marriage. Even the protection of children evolved from a 'penal' mentality. Until the late 19th century the protection of children was confined to legal sanctions against murder, maiming and incest. When the protection of

children against adult cruelty and neglect followed, it was modelled on legislation aimed at preventing cruelty to animals.

Not only did the rights of children come last in the family hierarchy, but early protective legislation defined children as subordinate members of society who owed obedience and deference to the father of the family, to the master of the school, and to other institutions in loco parentis (Therborn, 1993; Stoljar, 1980). Whereas the emancipation of adult males was a liberation from gerontocracy, feudalism, slavery and other socio-economic tyrants, the emancipation of women and children has been 'a process of liberation from patriarchy' (Therborn, 1993:253) with children's rights only emerging 50 years after the first significant advances of women.

The historical ambivalence evident in the treatment of children is reflected in the changing priorities of science and law. Childhood has rarely been explicitly studied at all, but when it does feature as the focus of research agendas, the main emphasis has been on children as passive recipients in the 'process of becoming adults' (Allport, 1960). Children are treated as 'non-people in non-places', with research focusing on the child as an outcome of genetic and environmental processes, rather than a social being actively engaged in life. Good outcomes for children, traditionally means developing those skills, competencies and cultural practices that enable a child to make a 'successful' transition to adulthood. Children are dealt with as 'human becomings' rather than human beings.

A second theme evident in the research literature centres on the preoccupation with negative indicators and outcomes. It is a bias encapsulated in research on 'dysfunctional' families and children 'at risk', where the emphasis is either on children in trouble or troublesome children. The international literature is preoccupied with:

> Neglected children, children who are victims of violence and sexual abuse, children who have disappeared, children of divorced families, criminal and deviant children, truants - indeed, even hyperactive and exceptionally talented children seem to constitute a problem (Qvortrup, 1987).

Whereas the human development literature generally adopts a life-cycle approach in explaining the transitions made by individuals as they proceed from one stage of development to another, policy-related studies on childhood are dominated by a 'welfare' focus where the emphasis is on those individuals or groups who deviate from the norm. The welfare approach is problematic for two reasons: first, it focuses attention on a minority with 'explanations' inevitably limited to groups that have already been defined as deviant; and secondly, it begs the question, what is normal development?

A third theme to emerge from the international literature concerns the narrow definition of 'risk' and the limited range of factors that are used in focusing policy options and in prescribing rights. Whenever children are viewed as a population group they are generally

perceived as a collection of individuals - the dependent cogs of the family unit within a society of adults. Even the statistics we collect on children are almost exclusively focussed on 'the family' or 'the household', and as a consequence the child is viewed as a 'by product' of the main unit of observation. This reductionist approach to childhood is exemplified in studies of children at risk where the focus centres on individual deficiencies and pathologies, thereby excluding environmental factors such as housing, work-poor households, the economic circumstances of the family, and the pervasive influence of 'unfavourable' neighbourhoods.

At the same time there are a vast range of studies that focus specifically on children or individuals and as members of the family and community, and from which we have much to learn. Research on the capacities of children, and their resilience to survive against overwhelming odds are obvious examples (Masten & Coatsworth, 1998). So too are those studies that focus on family transitions, on parenting, attachment, and the quality of relations between members of the household. But despite these strengths there has been a myopic preoccupation among policy analysts, researchers and family practitioners, with treating children in isolation from the changing conditions of the society in which they live.

It is only by understanding the context in which development occurs that we can begin to understand how children within the industrialised world replaced 'the elderly' as the poor generation - the generation most at risk (Bradbury & Jantti, 1999). It is only be examining the changing relations between the family, the market and the state that we can understand how the past 15 years has left the children of this country with an economic burden, in the form of a social deficit, from which we are now trying to extricate ourselves. We talk about the rights of the child to have a voice, but I cannot recall children or young people having any say in the adoption of student loans. If access to quality health care is a basic right, then how can we justify the effective exclusion of children from primary health care in some areas of the country, because of cost? Is it in the best interests of the child to assign guardianship to a family or whanau, knowing that the environment to which these children are being assigned is abusive, overcrowded, or under-resourced?

I grew up in a generation in which my father had a paid job and my mother provided unpaid work in the home, as well as voluntary work in the community. The family wage paid to my father was supplemented by the State in the form of free education and health services for all members of the family. When I left school the most difficult task I faced was deciding on a job or career because the country had full employment. The welfare state provided in effect a 'social contract' between the generations which was fulfilled by my parents when I and my brother were growing up, and which was reciprocated when my parents later lived with members of the family.

The third party to the contract, the state, played a very significant role in supplementing the family wage and in reinforcing economic and social security (Shirley et al, 1997). It was a contract that delicately balanced affection and duty, trust and security, love and reciprocity.

The outcome may have been boring as Bob Jones often maintains, but it did ensure a highly stable society, and as J.B. Condliffe suggested at the end of the 1950's, it meant that "a baby born in New Zealand [had] a better chance than in most countries of living and thriving" - a conclusion he rated as "the most important fact to be recorded in any survey of the Dominions resources" (Condliffe, 1959: 287). That delicate balance has now changed, motivated by external forces, by demographic imperatives, and by what is best described as "backstreet accounting practices" which literally resulted in throwing the baby out with the bathwater.

It is important to acknowledge that certain aspects of economic liberalisation were inevitable given New Zealand's economic vulnerability and the changing patterns of trade which were at the centre of globalisation. During the first phase of economic liberalisation, at least some attempt was made to retain elements of the social contract by maintaining existing levels of social protection. Even when women began entering the labour market to offset the decline in the provisions of the family wage, various forms of domestic compensation were continued. This only changed once the programme of economic liberalisation went into full swing. The social contract at the centre of our economic and social security was discarded and in its place New Zealand adopted an extreme form of economic individualism. The private interests of individuals gained ascendancy over the wider interests of the public, and in turn, concepts such as justice and fairness were redefined as individual rights and responsibilities. Not only were the social aspects of development separated from economic policy but public services such as health and education were reduced to a range of commodities that could be purchased by individuals for their own enhancement and wellbeing.

While the programme of economic rationalisation varies from one country to another, the pattern is now clearly established. Jobs have been cut - incomes have been reduced - state services have been withdrawn - and the increasing costs of health, education, housing, and community care have been transferred to 'families' in general and to women in particular. These processes have been examined elsewhere as have the outcomes of this programme for various population groups including children. In the United States for example, the programme of economic liberalisation under Ronald Regan resulted in a 60% gain of marketable wealth for the top 1% of income recipients whereas the bottom 40% suffered an absolute loss. The biggest losers were children where poverty rates doubled - the salaries of CEO's by comparison rose by over 66%. Noam Chomsky quotes an American Commission on the subject:

> Never before has one generation of children been less healthy,
> less cared for or less prepared for life than their parents
> were at the same age (Chomsky, 1996 : 126)

Similar trends can be identified in New Zealand. The question remains - how can you equate these outcomes with the rights of the child?

The central concept of 'rights' that I want to emphasise today concerns the way in which the social contract was undermined during the course of welfare state restructuring, thereby weakening social solidarity and setting up an artificial conflict between the generations. A major impetus surfaced in the context of the 1991 Budget which highlighted the 'welfare burden' and the concept of 'welfare dependency' both imported terms that had little relevance to the New Zealand situation or conditions. These interpretations were reinforced during the 1990's by another imported concept - the aging society - an artificial construct that is frequently used to endorse the scaling down of public services while at the same time reinforcing the role of the family in the provision of 'community care'. The proposed Code of Social Responsibility was merely an extension of this ideology.

In demographic terms New Zealand society is aging, but to put the present preoccupation in context, we will not replicate the current pattern of aging in a society like Sweden for another 30 years. In the meantime we have very significant youth cohorts working through the schools which should be accorded a higher priority in terms of public policy.

The pessimistic interpretations of New Zealand as an aging society and the manufactured distortions aimed at highlighting the 'burden of welfare' will only succeed in further undermining the social contact that was established in the post-war period. This inevitably sets one generation against another and in the process it weakens trust and reciprocity which are essential for human relationships and for the viability of human institutions. Whereas distrust breeds conflict and social isolation, trust is the ingredient that characterises 'good government' and a truly civil society. Mutual respect and trust defines how we see ourselves and how we act towards one another. It is the engagement with one another as well as the capacity to participate in society that makes us uniquely human.

TOWARD A NEW SOCIAL CONTRACT

Obviously, we cannot return to the contractual relationships that were at the centre of our welfare state arrangements, because the circumstances and conditions have changed. However, we can begin the process of establishing a new social contract that goes well beyond the concept of rights articulated by the United Nations. To this end, I want to tentatively advance a conceptual framework that is currently being developed by colleagues in Europe[2]. It is simply the first step in a process designed to measure the quality of European life with the two intersecting continuums jointly referred to as the social quality quadrant.

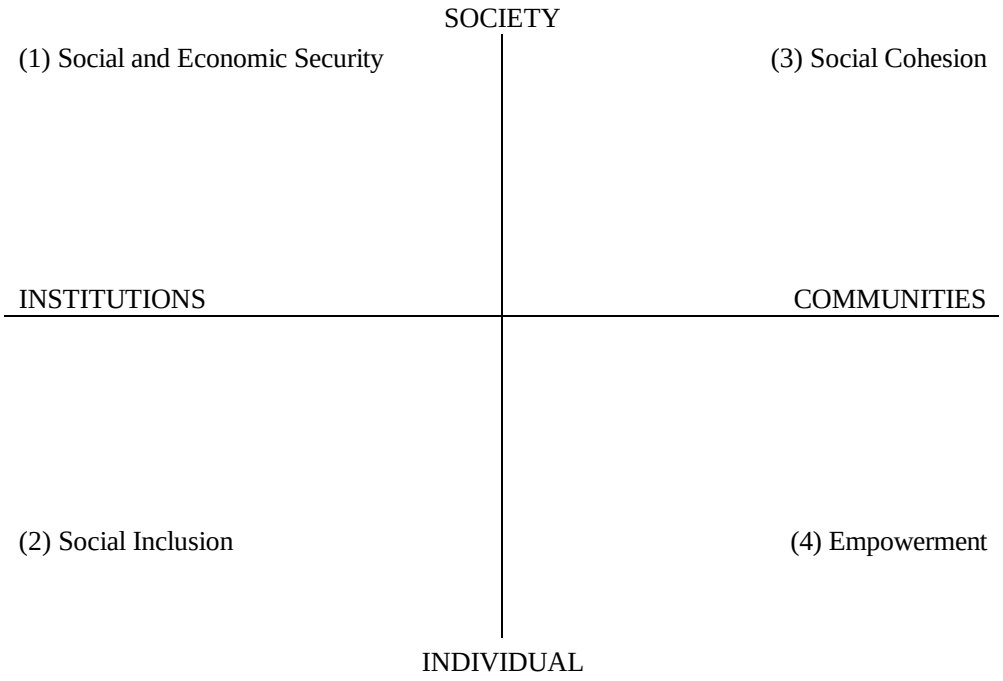
The standard of social quality is defined as the extent to which citizens are able to participate in the social and economic life of their communities under conditions that enhance their social wellbeing and individual potential. The level of social quality experienced by citizens is said to rest on:

- the degree of economic security
- the level of social inclusion

[2] Personal communication with Professor Alan Walker

- the extent of social cohesion or solidarity
- the level of autonomy or self-empowerment

Social Quality Quadrant



Social and economic security refers to the form and quality of social protection provided for the citizenry irrespective of their individual circumstances. Such provisions vary from country to country, but they include paid work, household income, affordable accommodation and housing, educational opportunities and health. *Social inclusion* (which is the antithesis of exclusion) addresses those factors that prevent people from participating and belonging to society - poverty, destitution, unemployment, overcrowding, illiteracy and discrimination. *Social cohesion or solidarity* concerns the viability of social networks and the cultural traditions on which these networks are based. It directly confronts the disparities between neighbourhoods and communities and counters those systems or policies that prevent the sustainability and viability of human associations. *Empowerment* refers to the way in which individuals and groups are engaged in the life of the community. It assumes a certain level of control over one's affairs and the ability to engage with others in promoting individual and collective aspirations.

The development of this framework offers a number of advantages over comparative systems. It encompasses the broad range of factors that affect the quality of life from the individual to society on one continuum, and from institutions to communities on the other. It considers both functional and dysfunctional aspects of development and it identifies objectives that can

be refined and measured. In conceptual terms it encourages a research and policy focus that emphasises *capacities* - the capacities of the child - the capacities of the family - the capacities of the neighbourhood and community - the capacities of institutions and organisations - the capacities of government - the social and cultural capacities of the citizenry. It also provides a framework for assessing *outcomes* for particular populations or groups (such as children).

Ultimately, this type of framework goes beyond those conceptual models that centre exclusively on inputs or outputs - on the individual child or the family of which the child is a member. While the scope of the framework encourages us to consider individuals, families, and the various environments in which they live, the intersecting continuums suggest that the greatest advances in knowledge are likely to come from examining the *relations* between these various domains, and the social contracts on which these relationships are based.

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Chapter Five

CREATING A CULTURE OF CARING ABOUT CHILDREN

by Sarah Farquhar and John Brickell

How much value do we place on children?
How do we demonstrate this in our community?
How do we ensure parents have the support and resources they need to meet their common responsibilities for child-rearing?

It is our concern that these questions are only just beginning to be addressed in New Zealand.

We would like to state that the views we express at this forum are our own. While John is an advocate for the office of the Commissioner for Children and these views are consistent with office policy, our views our based on many years of experience in different roles connected with children, families, and education. We are also both parents.

Changing social circumstances and new understandings of children are not reflected sufficiently well in current legislation and practice. Having children is the most essential activity for the continuation of New Zealand society. We should be supporting parents to foster and maintain a continuum of caring which starts before their child is born and corresponds to their child's emerging needs. Failure to do this adequately means that society will need to support these children throughout their lives rather than the children supporting and furthering society. Recent newspaper article headlines indicate that there is indeed cause for worry and for the rights of children to be taken seriously (e.g. "Jail terms possible for kids aged 10", Edwards, 2000; "Three under-10s have killed themselves, Larkin, 2000; "Sad end to baby's last journey", NZPA, 2000; "Our criminal children: 25pc commit an offence before 19, says report", Alley 2000).

Creating a culture of caring about children is an essential pre-requisite to meeting Article 18 of the UN Convention on the Rights of the Child. We have identified four well-known new realities for children and families in our society. We will discuss each of these, comparing and contrasting the positives as well as the negatives, and put forward suggestions as to how we might achieve such a culture.

REALITY ONE: Society does not care enough about its youngest citizens

Discussion

The Chinese count the age of their children from conception. This demonstrates the importance attached to the period of gestation, the first 9 months or so. Western practice implies that the child gains life status only after the transition from womb to world.

If parents forced alcohol, tobacco, marijuana, and other recreational substances on new-born children, they could rightly be accused of child abuse. Pregnant mothers who smoke, drink, take drugs or otherwise are not sanctioned at all while committing similar abuse. We understand the destructive impact of these substances, and feotal alcohol syndrome is recognised as one outcome of such activity. Such damage to the forming fetus has huge consequences for the child, for families and society, socially, educationally and economically.

The crucial nature of gestation through to the first three years of life is well documented. Building a house, planting a tree, making almost anything involves conscious intent, planning, and follow through. It is an established principle that the foundation is critical, that neither building nor plant will flourish and stand tall from an inadequate beginning. If it is a structure, inspectors will examine each stage of the process for compliance with a dense body of regulation. Making a child however, an act more significant than these, has no such strictures. As a society we expect people to conceive and grow healthy, productive, contributing members of our communities without any audit of their ability to do so.

Suggestions

We suggest a significant paradigm shift from simply caring <u>for</u> children at best, towards the development of a culture of caring <u>about</u> children. To care <u>about</u> children means everyone in society, including parents, health workers, teachers, lawyers, and policy-makers, place children at the forefront of their decision-making and consider first how their behaviours or advice will impact on children rather than on themselves, their clients, or their profession.

In addition, caring about children also means putting to one side personal and political agendas and questioning how well children's interests are actually being served in every policy, and change that has some bearing on children.

REALITY TWO: Parenting is no longer "women's work", and more women and men are combining both parenting and paid employment

Positives

1. In non-traditional households where the mother is also in paid employment, fathers tend to play a larger role in parenting and household tasks compared with households where the mother is not in employment (Hoffman, 1989).

2. Many men are choosing to be more active parents, and they and their family benefit from this.
3. Boys are learning the realities of parenting and children are gaining less stereotypical views of the gender roles. Research has also indicated that mother-employment is also very positive for girls' self-esteem, achievement motivation and confidence in setting career goals (Basow, 1992)..

Negatives

1. Single mothers outnumber single fathers and this has implications for the rearing of boys. For boys in single-mother or all women households there is the problem of a lack of male role-models for boys in primary schools and early childhood centres. Significant relationships with adults of both genders is often less of an issue for children in single-father households, because father-custody children tend to have more contact with their mothers than mother-custody children have with their fathers, and single fathers tend to make more use of childcare, relatives and others who are usually female for the care of their child (Berns, 1985, p. 109)
2. Group care for children often from as young as birth or six weeks of age is growing in popularity as a solution for allowing more women to continue or return to paid employment. Children can be separated from their parents or legal guardians for as many as 10 hours a day five days a week. Increasing numbers of children are spending more of their waking hours away from their home environment and with people who do not have long-term responsibility for their upbringing and development.
3. Quality time can be a myth in many families. Especially when parents and children have so little time together while the children are awake, and when parents are tied, possibly also stressed, and needing to bring work home with them in the evenings.
4. Now both parents are more likely to miss out on daily changes in their children, and the shared experiences, connectedness, and intimacy of on-going contact with their children (Podmore, 1994).

Suggestions

We need to look more closely at how parents are supported in the performance of their child-rearing responsibilities. There needs to be more research and thinking done on the provision of information on matters such as the timeliness of having children, gender roles, and child-rearing to people before they become parents and after they have had their child as they are learning to be parents.

Family-friendly workplaces and employment conditions can have a positive impact on employees performance in the workplace. Employers need encouragement to accept the complexity of employees lives when they are parents, and understand that employees do have significant other responsibilities.

The partnerships between home and early childhood centre settings and schools need to be strengthened. Schools and early childhood centres increasingly shy from "playing parents".

But the line between caring and parenting is arbitrary. For example, schools and early childhood centres are recognising the need to teach values and social skills, and even provide breakfasts!

When we look at the early needs of children we can see that emotionally responsive caregiving is so essential for children's learning and development from a very early age. It is more difficult for professional caregivers to provide this, than those who have long-term responsibility or as we often say, are "irrationally crazy" about their child. Research on brain development shows that by the age of 3, the brains of children are two and a-half times more active than the brains of adults, and they stay that way until the child is about 10 years old (Shore, 1997, p.21).

For young children what is really important to them is that they are not left alone, that they are with people who really care about them, and that these people are not so stressed or tied that they do not have time for them in ways that matter. Recently, I (Sarah) witnessed a girl of about seven or eight years standing beside an open car door where a woman, probably the girl's mother was seated in the drivers seat. The girl was tearful and I heard her pleading with the woman to walk with her up to the classroom. The woman shook *her head, the girl responded "but I only want to be with <u>you</u>!"*

Currently, the focus in our society is on having "the" baby, and not also on providing appropriate and timely assistance to parents on how to cope with their developing child, social and peer influences on their child, and other competing demands in the parent's life. As well as assisting parents to know what to expect and how to cope with developmental changes and challenges, a continuum of caring also means that parents and legal guardians must ensure that parental responsibilities remain intact even if their own relationship breaks down. It's about parents taking responsibility for their children, and seeing that this responsibility is not contingent on their continuing partnership or marriage.

REALITY THREE: Parent separation is no longer the exception

Positives

1. Parents who have an agreed commitment to their children, whether through a parenting plan or in a court ordered context tend to be more involved in their child's life than parents who do not. The top priority for parents with joint custody can become their child.
2. Children do not have to live in families where there is intense parental disharmony and dissatisfaction, and even abuse.
3. New forms of families are emerging. Children can find themselves becoming part of at least two homes and two family groups. This can be positive if these transitions are well-managed.

Negatives

1. Living in at least two homes and being part of two or more family groups can be negative if there is conflict in parenting styles amongst the custodial and non-custodial parents. There may be difficulties in communication amongst the parents who have decision-making authority, as well as tension between those who do and those who don't. It can also result in difficulties in communication concerning the child's education, health and other matters.
2. So-called step-parents often figure in neglect and abuse statistics.
3. If the separation or divorce was bitter, children may become pawns in the on-going conflict between the parents, and this is psychologically very hurtful for children.
4. Research suggests that by and large these transitions result in lower socio-economic status for the custodial parent and child (Slee, 1993).

Suggestions

Before their baby is born, preferably by the third trimester, parents should be offered support and information to formulate a parenting plan. This would involve discussing together, and recording their values as parents and views on a range of child-rearing issues (see for example suggestions on parenting by Maccoby, 1980). This plan should be formative, changing as the child grows and as the parents develop their parenting skills and knowledge base. The plan should remain and be there to assist parents to meet their responsibilities regardless of any changes to their relationship with each other.

Having a plan that puts the child as the top priority and has parents putting aside their differences and changing personal circumstances, helps, at least to some extent, to overcome one of the main problems for children of parents who are awarded joint custody, and that is what happens in the long-term when parents remarry, or move to a different town for example. It provides a reference when the love which begat the child changes to other emotions.

The State and other parties should assist parents through the provision of information and community networks to provide a continuum of caring for their child. Instead of children being at the bottom of the heap they should be at the top. For example, a new child-focused interagency group is being set up to help fill the gaps for meeting the needs of children when parents are caught up in domestic violence (Masters, 2000).

REALITY FOUR: The responsibility parents' take and how they view their role is influenced at the macro-level by laws and social sanctions

Positives

1. Harmful and stereotypical views about parenting and the treatment of children, such as the physical punishment of children, can be challenged through the development of new legislation, repeal of existing legislation, public education, and social policy making.

2. The long-term success of campaigns such as the drink/drive initiatives suggest that forms of social engineering can be successful in the New Zealand context.

Suggestions

All legislation needs to be considered for its potential effects on children. For example, the effects of the proposed De facto Bill on children does not appear to have been examined, and yet there could be significant consequences for children who are living in families where parents are not married and children who are born to at least one parent who has no intention of sharing of property but would be otherwise willing to live together. The Bill is being promoted largely as protection for women who do not realise they are not covered by the existing Matrimonial Property Act (Berry, 2000; Coney, 2000).

The removal of all adversarial positioning from child related family court issues would strengthen the position of children (Haines, 2000).

Enforcing access orders, and consideration of which parent will best facilitate the child's contact with the other, would remove children from the firing line.

Legislative insistence on expansive television content, less use of violence as entertainment, and meaningful depictions of New Zealand culture could broaden children's range of experience and confirm their sense of belonging.

CONCLUSION

Society does have a responsibility for children and for assisting parents and legal guardians in their child-rearing. Society's responsibilities are expressed through "macro policies which support families, and through its agents" whom it relies on to ensure that children's rights are met (Office of the Commissioner for Children, 2000, p. 6). There is a familiar saying that it "Takes a village to raise a child". Communities should be empowered more to work on parenting solutions. We need to work to create more linkages within communities, between the various organisations and institutions that have contact with children and parents and between members within the community. As individuals living within communities we need to recognise that we each have a role in supporting other parents.

Children's rights should not be put in jeopardy by the nature of the relationship between their parents or by macro-policies that do not give children's interests a top priority. Children's rights to a parent should not be denied if the parent is male, due to social beliefs and practices that can work to exclude male parents from playing a full parenting role. Parents who are otherwise competent, and make all their own decisions should use all their skills to ensure that judicial decision making on their behalf is an absolute last resort.

There is a lot more to having a child, than simply conceiving a baby, as parents discover. But unfortunately there is little assistance available to parents to be parents, and to cope as parents

in times of change including separation and divorce. Sadly, there is also a lack of recognition in our society of the value for children of having parents who share decision-making authority and who provide a continuity of care and are emotionally responsive and available. We hope that we may start to move from simply caring for children, at best, to caring about them.

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Chapter Six

CHILDREN AND PARENTAL REMARRIAGE

by Robin Fleming

THE FAMILIES OF REMARRIAGE PROJECT

When speaking of families that have been re-created from the parts of families divided by divorce, people tend to refer to "blended families" or "reconstituted families". Having made an in-depth study of such families, I now avoid these terms, as they imply a rebuilding of the second family on the same lines of the first. What my research revealed is that there are a number of structural differences which mean that life in a remarriage family is not going to be identical to life in a first marriage family. I have concluded that these are in fact families of a different kind.

The research I am referring to was undertaken between 1996 and 1998. It examined life in the households of couples who had dependent children from the previous marriages or marriage-like relationships. The study was funded by FRST over two years. It involved collecting in depth case studies of family life and household organisation. Each couple was interviewed both together and separately, using an open ended interview technique. A total of 36 couples were involved. A separate study using the same methodology was made of children's experience of parental remarriage. A total of 33 children from 19 families took part in this study. (Details of the methodology used are available in the research report).

THE MAIN FINDING OF THE RESEARCH

As I have indicated, the main finding of the study was that families where there are children from a previous marriage of one or both partners are not the same as first marriage families. There are a number of structural differences which constrain many aspects of household and family life. Three major differences I identified involved money flows, the use of time, and demands on house space.

Money flows

In a first marriage family, for example, it is usual for all the money earned by the couple to be available for the use of their household (and in some cultural groups of their extended family). In a remarriage family, child support arrangements mean that a proportion of the income earned by a family member who is a non-custodial parent goes out of the household. If a family member is a custodial parent, on the other hand, the household income may be enhanced by child support received. Because of the uncertainties surrounding child support

arrangements, payments out for children in other households are not always offset by payments in, which means that joint couple income is a poor indicator of the money available to household members.

Time constraints

The family's use of time too is often constrained by arrangements for access visits, which mean that children who live in the household are away on a regular basis, and/or non-custodial children come to visit on a regular basis. Some of the households in the study moved from high occupancy when there were four of more children present, to low occupancy with just the couple at home, as the tides of access visits ebbed and flowed.

House space

The numbers of children coming and going had an impact on the size of the house the couple required. The usual pattern of access visits was for the children to visit their non-custodial parent on alternate weekends and for half the school holidays. When the definition of the weekend was a generous one, this involved the children being with their non-custodial parent for about one third of their time.

House space is needed to cater for the family at it's maximum size. Non-custodial parents want their children to enjoy visiting hem and to feel at home when they come, so it was important to them that they could provide a bedroom, or at least a bed for the children on access visits, and some families had extended themselves financially to ensure they had enough bedroom space.

RELATIONSHIPS

I have outlined these practical issues of time, space and money to give a context to the constraints under which remarriage families operate. They are constraints that effect the lives of everyone involved, not least the children. I have written about them in more detail elsewhere. However, perhaps the most surprising factor that emerged from my study was the difference between relationships within these households and the expected stereotype of family relationships. It is the relationships between children and their parents' new partners that is the focus of this paper.

There are two factors which make it difficult for an incoming partner of a parent to step into a parental role with the children. First is that children tend to experience their parent's new partner as undermining their own relationship with their parent which makes them disinclined to be accepting, and second, is that in most cases they already have a parent of the same gender as the incoming partner and don't believe they need another.

CHILDREN'S VIEWS OF LIFE WITH A SOLE PARENT

Looked at from the children's point of view, having their divorced parent move into a long term relationship with a new partner is an event that causes some ambivalence. For an adult, being a sole parent, and particularly a custodial sole parent, can be a lonely and stressful

situation. Having sole charge of the children limits the parent's capacity to earn, while at the same time she or he has the added workload of caring for the children and the home. And, however dearly you love your children, they do not offer the same support and companionship that one expects from an adult partner.

There is a body of research which suggests that children of sole parents do less well in a number of areas than children who have two parents at home (Rogers and Pryor 1998:5). This leads to an assumption that children need and want a second adult in the home, and the cliched expectation that when a mother finds a new partner she is also finding her children a "new father".

We found, however, that children often enjoyed living with just Mum or just Dad. For that time, they had become their parent's confidante, they were special, on equal footing, they were needed

One teenage girl, who I have called Annette, described it this way:

> "In some ways I wish I could still be with just Mum because we had a different type of closeness. Like ... she goes up to her room with (her new partner) and they will have a talk, whereas when she used to come home, me and her would go up to her room and talk like that. So that's different and the closeness has gone."

Children's ambivalence to the arrival of a parent's new partner. The arrival of a new partner, rather than offering something they needed, took away the intimate status the children had enjoyed. They were "knocked off their perch" as one incoming step-mother expressed it. It is hardly surprising that many children regard the new adult in their lives with ambivalence.

Furthermore, the children are unlikely to think of this new partner as a parent because they already have a Mum and a Dad. Most of the children in our study lived with Mum, but they spent a lot of time with Dad. Even those who were quite young were very clear who their natural parents were, and it was their natural parents they looked to for love and guidance, and to whom they gave the right to discipline and control. Even children who had lost a parent through death were hesitant to accept their living parent's new partner as taking over the role of the parent they had lost. The majority of the children in our study viewed family relationships as being established by "blood", not by arrangements such as re-marriage or co-habitation.

CHILDREN OF SEPARATED PARENTS OFTEN LIVE IN TWO HOUSEHOLDS

Because of the access arrangements which structured their lives, the majority of the children in my study were members of two family households, their mother's and their fathers. They lived in each either one a third/two thirds basis, or in the case of joint custody on a fifty/fifty basis, and they saw themselves and were seen as members of both households. There were

therefore in close touch with both their parents even though in some examples the parents barely communicated with each other.

Even in those cases where the children's natural parent had gone away or spent little time with them, the children often saw them as special, and wanted contact with them. Even a loving step-parent was set aside when a natural parent come on the scene.

CHILDREN'S RELATIONSHIPS WITH PARENTS' PARTNERS

Our study examined the relationship between the children and their parents' new partners. We asked what the step-parents and children called one another, and how they described the relationship to others. In all but a small number of examples both parents and children used Christian names both as terms of address and when referring to one another. The parental terms "Mum" and "Dad" were only used in a minority of examples, and those were cases where the natural parent had gone away, and/or the step parent had been part of the child's household since the child was very young. The terms "step-mother or -father" and "step son- or -daughter" were sometimes used in reference, but some people chose not to use them. Children sometimes talked about step-parents in terms of their relationship to their parent rather than to themselves, for example: "Dad's wife" or "Mum's boyfriend".

When we asked how they would describe the relationship they had with partners' children or parents partners, the most common term used was "friend", sometimes qualified by some suggestion of a parent/child role.

One man, for example, talked about his relationship with the youngest of his new wife's children having a "fathering aspect to it", and others described their similar relationships as being a "male parental person", or a "male parent", terms which allow some social aspects of parenting without claiming the personal relationship implied by "father". It was rare for an adult in this position to claim to be a parent. As one mother said:

> "I don't want to be their mother. They've got a mother, and a perfectly good one too in my opinion. I can be their friend."

In their descriptions of their relationships with step-parents, several children reflected a similar blurring of the boundary between friend and parent with comments such as:

> "More like a friend than a parent, but a little like a parent"

> "Like a friend, I mean she can be a parent if she feels we're doing something wrong ... but really, she can't be our Mum."

On the other hand there were children who rejected any notion of parental authority from their parent's partner.

STEP-PARENTS' INVOLVEMENT IN PARENTING

Having established the way these relationships were described, I then examined the extent to which parents' new partners were in fact involved in parenting their children. In order to do this, I developed a four part definition of the tasks involved in parenting children. These are:

- providing financial support
- providing for ongoing physical requirements (food, transport, clean clothes etc)
- supervising, educating and guiding
- giving personal support and love

Financial support

Financial support in a first marriage family tends to be provided by the man of the couple or by both parents jointly, to all the children in the household. In the remarriage families in my study, there was a tendency for each parent to provide for his or her own children.

In many households this tendency was became blurred when, for example, the male partner was responsible for more of the household expenses because of his greater income. However, with the exception of those with small babies, all the women in the study were earning something, and most of them liked to think that what they earned plus the child support they received from their children's father amounted to the money that was used to support their children. Where relationships between the children and the mother's new partner were strained, it was particularly important for the children's mother to be able to demonstrate that her partner was not supporting her children financially.

Child support was in some cases put into the family's financial pool and drawn on as part of general expenses, but it was more common for it to be earmarked for some of the children's costs such as a contribution to the mortgage, or for their personal expenses for clothes, school, medical services and so on. In the most extreme example, a mother assured me her children went without these things if their father did not pay his child support.

Meeting physical requirements

The housework generated by meeting children's physical requirements was less clearly demarcated. Housework is traditionally women's work and in most cases the woman of the household did the cooking, cleaning and so on whether or not her partner's children were in the home, and there were examples where this extra work was bitterly resented. On the other hand there were some examples where father took over some of the cooking and the transport when his children came to stay.

Supervising, educating and guiding

Supervising, guiding and educating children is perhaps the core task of parenting. It involves not only things such as setting rules for personal safety and encouragement in learning and study, but also more subtle things such as setting standards for behaviour. Much of this guidance and learning happens by example, and occurs at a less than conscious level, and because it is so personal it can be the source of bitter disputes. I recorded examples of

arguments between parents and their partners over what the children wore, or whether they turned the lights out when they left the room. The contentious issues of discipline and punishment comes into this aspect of parenting.

Twenty three of the of the couples in the study had children from both their previous relationships, and one things that emerged strongly was that parents, even without meaning to, favour their own children. Although equal treatment of all the children was an agreed rule in most families, parents were often more tolerant of their own children's behaviour than they were of their partners'. Some of the couples recognised that this was a natural tendency that had to be curbed for the good of the family, but others explained their feelings by blaming their partner's children for behaving badly or not coming up to scratch. It was common too for each partner to perceive the other's children as being very demanding of their parent, and of that parent as being too lenient towards the children.

Personal support and love

This leads to the last of the parenting tasks, giving children the love and personal support they need to grow up confident and self assured. Love is not a feeling that can be turned on at will. It is either there or it is not, and many of the people in the study confided to me that they found it very difficult to feel warmly towards their new partner's children. Sometimes there was one child with whom they had particular problems.

A woman I called Prue described this situation with some anguish:

> "I feel there is an expectation others have, and also I've put on myself because (my partner) seems much closer ...to my son than I find I am with (his daughter). (There is an expectation that there will be love) ...especially on women, because women are seen as the great nurturers of the world, and because I've got a child already I'm a mother so therefore I should be motherly to all children, whether they are my chosen own or not."

Even when they felt warmly towards their partner's children parents felt quite differently towards their own children. After examining the way people talked about this difference, I was able to define what I call the "parent feeling" which involves not only such things as love and tolerance of the children, but an engagement with them, a feeling of being involved in those things the child experiences, pain or happiness, success or failure, of having responsibility for the well being and the future of the child. This engagement can lead to deep anger and disappointment if things went wrong. It involves a sense of identification with the child, a feeling that what the child does reflects on oneself.

Even step-parents who got on well with their step-children still did not reflect this kind of personal engagement. They related to the children as friends, often loving friends. They had learned to love the children because of qualities they admired, and because of the compatibility between them. They had earned the respect of the children and were in a

position to offer advice and even set limits. But, just as a close friendship can be broken by events, this step-relationship depended on the ongoing mutual respect of adult and child and could break down if the two fell apart. There were examples of parent's partners who had been genuinely fond of a child becoming hurt and hostile when the child concerned became a difficult adolescent.

If adults found it difficult to find in themselves a parental feeling towards their partner's children, the children did not offer their parents' partners the same love and respect they gave their parents. They rarely accepted that a step-parent had the right to exert authority over them. Even where they had a great deal in common and felt a genuine liking for them, the children recognised the lack of parental engagement and commitment the step-parents had.

Here are two comments from teenage children which sum up the difference with considerable insight:

A teenager called Peter said that his parents' expectation of him were "reasonably high" but that their partners: "Don't really comment. They'll say 'well done' if I do well in a test but they won't say 'I want you to do well'".

Lizzy, who was fifteen said:

> "It was like a joint thing, like two parents, well they made me so they wanted to spend an equal amount of time with me. But like (my step-Mum) it's like there's no connection there that makes ... me want to turn out really good, or want her to be proud of me."

The implication of this I think can be discussed in terms of Coleman's theories of social capital. Social capital is a term that is bandied about a great deal in the political context these days. Coleman's analysis predates this rather loose use of the term and takes it back to the personal input children need from parents to make the most of their opportunities. An adult's resources are available to children through their continuing engagement with them, so the absence of a parent is defined as a structural deficiency in family social capital (Coleman 1988:S111).

It can be argued ,therefore, that a parent who is closely engaged with a child will offer greater social capital that a parent's partner who is likely to have a less intense engagement. However well a child gets on with his or her step-parent, and however much that adult can offer in terms of things such as help with the computer, or hunting weekends, they are less likely to have a personal stake in whether the child succeeds or fails than is the natural parent, and the child is less likely to want to strive to please them. The "social capital" they can offer that child is therefore less.

CONCLUSION

To conclude, what this study revealed is that the parent-child relationship at the turn of the twentieth and twenty first centuries is not perceived as a social role but as a personal relationship with a biological base. A parent's new partner should not therefore be looked on as a substitute parent, and is unlikely to achieve a good relationship with the children if he or she tries to exert parental authority and discipline without first earning the child's liking and respect.

Parents have an inbuilt tendency to favour their own children. Even when they strive to be fair, they are likely to be less tolerant of step-children than of their own.

Whether parent's partners and their children get on well depends on personal compatibility and mutual goodwill. Liking cannot be forced even with the best of goodwill.

Even when they get on well with the children and feel a genuine love towards them, parents' partners are unlikely to have the same deep inner commitment and sense of identification with the children as their natural parents.

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A copy of the full report of the research reported in this paper is available from the author, Dr Robin Fleming, 83 Greenhill Road, RD 1, Waikanae, or email to robin.fleming@xtra.co.nz

Chapter Seven

SUPPORTING A TEAM APPROACH IN PARENTING: A NEW VISION FOR PARENT SUPPORT

by Harald Breiding-Buss

ABSTRACT

While there is much public and political attention on the parenting role of fathers in contemporary New Zealand, both women and men complain about obstacles to stepping outside the traditional role division. The government's policies target women's role in the workplace through initiatives such as the Equal Employment Opportunities Trust and much of the work of the Ministry of Women's Affairs is in this area. But no similar emphasis is put on men's role as parents, which would be essential if a more equal team approach in childrearing is to be fostered.

Surveys have found that while on the one hand there is great consensus in Society about shared parenting between mothers and fathers as an ideal family set-up, men perceive substantial barriers to their role at home. These barriers arise from attitudes by parenting institutions as well as public imagery and stereotypes. As a result men see their role as support persons for mothers take precedence over direct involvement with the children, which prevents them from asserting themselves in their role as parents.

If a balanced role division between income earning and childrearing for both parents is to be achieved, social policy needs to target the father-child relationship in a positive way, and needs to encourage communication and cooperation between parents, regardless of their marital status.

INTRODUCTION: PARENTS AND SOCIETY

My own personal experience as a "role-reversed" dad from the time when my children were young babies was that it is not at all easy. Raising children is a challenging task in itself, but it is affected by an array of attitudes and stereotypes about mothers' and fathers' proper roles, which makes stepping outside those roles difficult. As a man I found that there was no infrastructure supporting me as a parent, which I felt comfortable enough using as a father. My partner, too, found it virtually impossible to access any parenting services as a full-time working mother.

As work becomes more flexible and living on a single income harder (Callister, 1998), more and more men are looking after children while their wives are working, while being employed themselves or working from home. The fathers and mothers I see in classes and groups are not lacking in initiative to adopt a team approach, but in support to do so, especially at the time when their baby is little and they are feeling insecure about their roles (Breiding-Buss, 2000). It is especially during those early months where the attitudes of support organisations and society as a whole can have a major impact on the role division of individual couples.

Society overall seems to have adopted equal shared parenting as their favourite model. A survey by the Office of the Children's Commissioner conducted amongst 2000 randomly selected New Zealanders in 1999 found very strong support both for overall concepts of shared parenting as well as equal involvement of father and mother with particular parenting problems [Table 1]. But the same survey also indicated that society feels ambivalent about fathers' competence in parenting. 45% agreed that "women are better looking after children" - almost the same number as disagreed. I have called this phenomenon the *confidence gap* of fathers: the gap between social expectations and social trust.

Table 1: New Zealanders' Attitudes to Shared Parenting

	Agree	Disagree	Not Sure
"Looking After Children is Not Manly"	3%	94%	2%
"Society Should Expect Fathers to Take an Equal Part in Parenting"	92%	5%	3%
"Women Are Better Looking After Children"	45%	47%	8%

	"Both Equally"	"Mainly/Only Mother"	"Mainly/Only Father"
Discipline	96%	2%	2%
Helping with behavioural problems	94%	3%	3%
Helping with personal problems	84%	11%	1%
Being involved with sons	79%	2%	18%
Being involved with daughters	77%	22%	1%

Taken from: Julian (1999). Percentage of a sample of 2000 randomly selected New Zealanders

An indicative study in the Nelson area conducted about a year later gives some clues as to why this is. Fathers see a conflict between the social expectation of supporting their partners in their mother role and asserting themselves as parents (Chapman et al., 2000; p.8):

> "Many of the Dads, when first presented with the survey were unable to comprehend and respond to the questions as was expected. In particular, many of the participants were unable to understand that the survey was about their

> experiences of services. They answered for their partners and children. It was as though they were quite unused to considering themselves as a valid recipient of support from child and family services.
>
> When these Dads began to make a shift to that of considering their own needs, many found this a new experience. During both the survey and the focus groups, many Dads commented that they had never considered parenting issues from the perspective of a Dad, having always considered parenting from the perspective of supporting the mother and child(ren). Thinking of their own needs as a parent, as well as how these needs could be supported, was a completely new experience for them"

And reflecting my own experiences - and that of many other male facilitators - in classes and groups the same study questioned the idea that men are "naturally" uncommunicative (ditto, p21):

> "It seems that far from being the silent and distant people who find considerable difficulty in expressing emotion, these men shared their experiences openly and enthusiastically. They talked with considerable interest and passion for their parenting role and they shared stories of vulnerability and pain"

If a favourable environment is supplied, men talk and get involved. But if service providers perceive men to be quiet and distant this may indicate a problem with the service rather than the men.

OUTSIDE INFLUENCES: HOW PARENTS ARE FORGED INTO PARTICULAR ROLES

Apart from their own personal networks and immediate family, parenting (and other) institutions would have the biggest impact on how parents perceive their roles. Many such institutions are also active to create such personal networks to assist the transformation into the new roles. Therefore they must be considered as very important in how social stereotypes (or what they *perceive* as current social stereotypes) are conveyed to the parents.

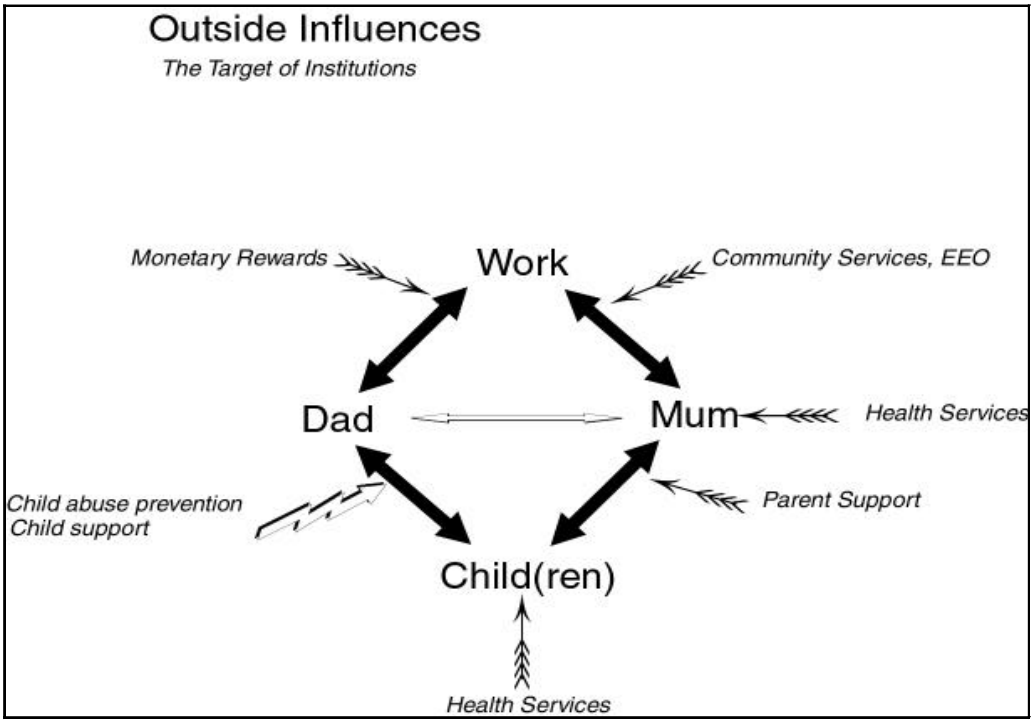
Role of Institutions

Parents may start out with ideas of (more or less) equal shared parenting, and (more or less) an equal role in breadwinning. Fathers I talk to in ante-natal classes usually see the first six months or year of the life of their new baby as a transitional period, where the role division in at-home caregiver and out-of-the-home breadwinner is dictated by circumstances such as breastfeeding and the fact that health professionals have liaised predominantly (if not exclusively) with the mother. However, the mother- and child-focus of health service providers remains and is not replaced at any time with a family-focus or an added father-focus. Institutions such as the Plunket Society, ParentsCentre, Playcentre and many others also foster the mother-child relationship through encouraging networking between mothers

and ‘upskilling’ women into parents. No such service is available for the father, who falls behind as a recipient of information. To the contrary, institutions offer more *negative* affirmation of the father’s role, in targeting them with child abuse prevention methods or chasing them up for child support payments. This is an important qualitative difference: women receive positive affirmation as parents, men receive the threat of sanctions if they fail to perform according to expectations. (Fig. 1.1.). Separated fathers complain that the Family Court continues this institutionalised role division between mothers and fathers in the case of separation (Julian, 1998; Birks, 1998). Society as a whole appears to agree with them (Julian, 1999).

Each parent’s relationship to work is also supported or encouraged in different ways. Men’s relationship with work is driven mainly by the monetary reward, for women there are institutions such as the Equal Employment Opportunities Trust or a large array of Community Services to promote their role in the workforce.

Figure 1.1: Influence of institutions on role divisions



Role of Imagery and Stereotypes

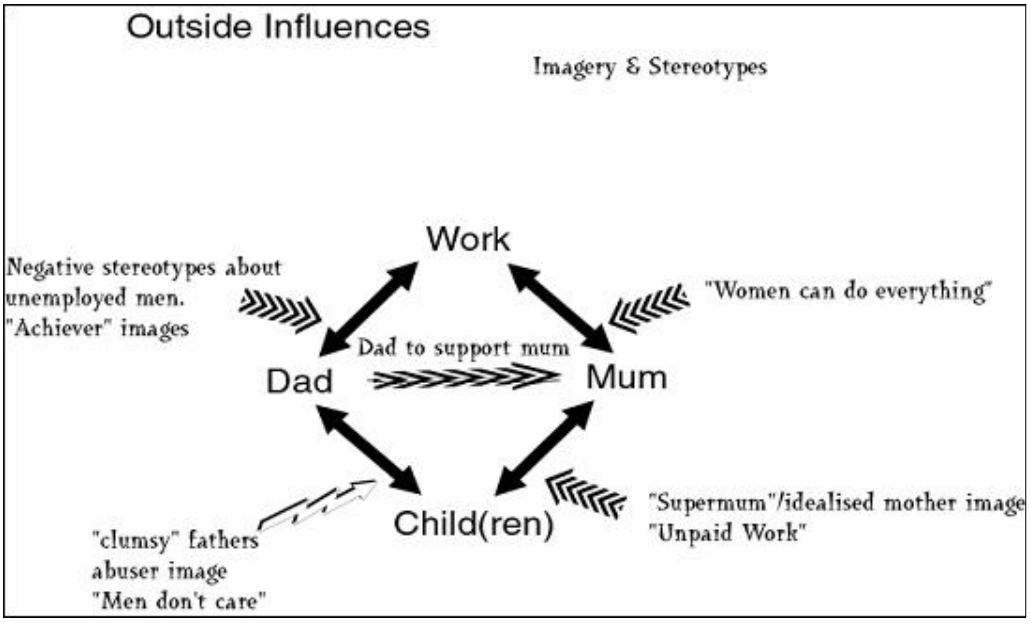
Add to that imagery and social stereotypes (Fig. 1.2.). There is pressure on mothers to live up to an idealised image, and modern programmes dealing with, for example, post-natal depression ask the women to analyse such pressures as a way towards healing (Morgan et. al.,

1997). But there is also increased acknowledgment of what women do at home, symbolised perhaps by the phrase "unpaid work".

The imagery and stereotypes are again much more ambivalent about the father-child relationship. There is a prevailing image of fathers as abusers, which is very strongly perceived by men as counterproductive (Julian, 1998), and which is conveyed very strongly by government departments, or government-funded institutions. There are many jokes about the clumsiness of fathers especially with infants (refer to Fig.3 for an example), and there's at least an equal number of jokes and images conveying the idea that men have to be 'dragged kicking and screaming into spending time with their children'. The father-child relationship seems permitted to occur under certain conditions subject to the proven usefulness of the father in other matters. Not the least of this is (paid) work.

There is certainly a strong drive for men to be "achievers" in their jobs, and job advertisements in weekend papers for the more male-dominated professions often pay heed to that ("High levels of energy and enthusiasm", "Success-Driven", "Achievement-Oriented", "Self-starter with minimum levels of supervision" - from job ads in the computer and electronics industry in The Press, Oct 21st, 2000). There are also very negative stereotypes about men who are unemployed – they are perceived as lazy or "dole bludgers". Women are subject to this to a lesser extent, and furthermore there are now more and more images conveying the idea that women can do everything (see the recent blockbuster movie "Erin Brockovic" as an example). No similar images portraying men's juggling acts between family and work exist.

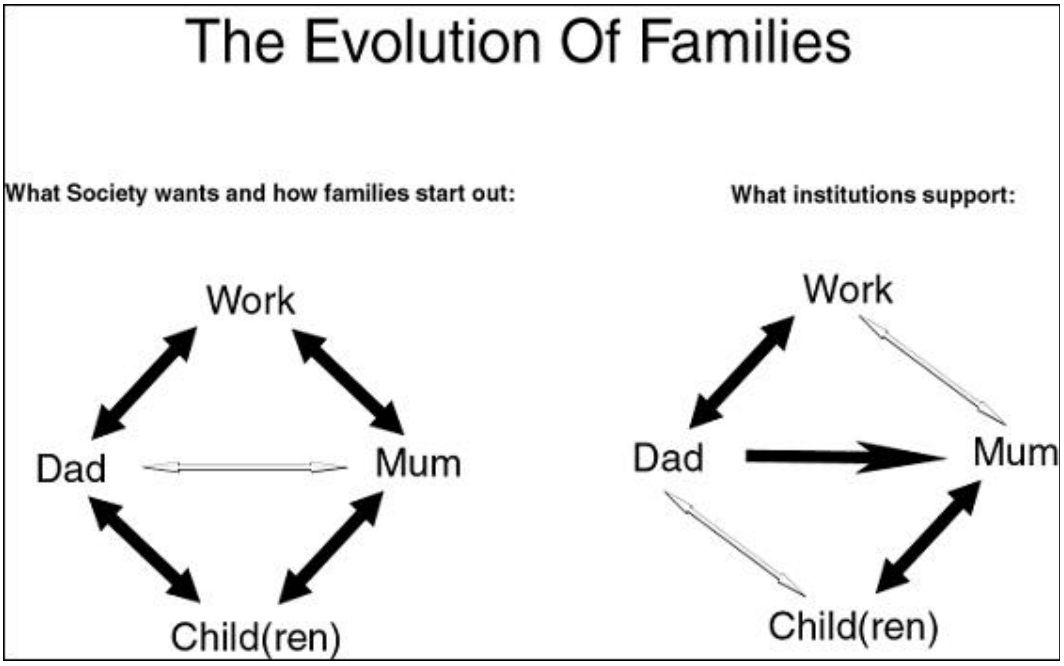
Figure 1.2: Influence of imagery and stereotypes on role division.



DESIRABLE POLICY TARGETS

In summary, institutions, imagery and stereotypes link together to provide a very strong emphasis on the mother-child relationship, a strong emphasis on the father-work relationship, a weaker emphasis on mothers and work, and very little (positive) emphasis on father-child. This is the basis for the *confidence gap*. Fig. 2 simplifies these trends and takes into account what men perceive as a one-way support role for their partners.

Figure 2: Difference between preferred model and supported model for role division.



The Ministry of Women's Affairs considers women's economic independence a high priority (MWA, 1999). Given how women's relationship with their work is linked to men's relationship with their children it is hard to see how more economic independence for women can be achieved without closing men's *confidence gap* at home. This is where progress seems to have stalled at the moment. What social policy needs to target, therefore, is, in addition to the mother and work relationship, the father and child relationship as well as the relationship between the parents, especially when they are not living together.

Personally I believe we need an entire paradigm shift as far as the homefront is concerned. Official New Zealand makes no difference between women's issues and children's issues, and I think that reflects and reaffirms the idea of children being women's work, and men's job being a financial supplier to this relationship. The Ministry of Women's Affairs and other government-funded institutions may act against their own goals and targets by maintaining this narrow focus. The government's goals are well in line with Society's wishes, and yet the

government's policies probably act to hinder further progress, because they target only one half of the solution.

We need to start thinking about how we can support families as a team without reinforcing traditional roles and without taking choices away from parents. In an earlier paper I have called for a government taskforce that looks into how shared-parenting friendly the institutions are it funds, and how they can be brought more into line of what parents and society as a whole want. I would like to reaffirm this call here.

Finally, there is an immediate social need for putting more positive emphasis on the father-child relationship, resulting from the numbers of sole fathers and the amount of time men now spend with children alone. I believe we cannot afford a *confidence gap* in fathers.

Figure 3: Example of joke about "clumsy father" and society's stereotypes (Cartoon by *Scanz*)

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Chapter 8

SHARED PARENTING: WHERE FROM? WHERE TO?

by Mark Henaghan[1, 2]

1. STATUTORY LAW AT THE MOMENT

Both parents, provided they are married or living together at the time of the birth are guardians.[3] The Guardianship Act 1968 says that both guardians have *equal rights* to the custody (the day to day physical care of the child) and guardianship (the control over upbringing and decision making). The Guardianship Act says that both parents are equal, one is not more important than the other. This state of equal rights remains until either the parents agree to a different arrangement, such as after separation the child will spend predominately more time with one or a Court Order rules that it is in the best interests of the child to be in the sole custody of one parent with the other parent having access rights. If there is disagreement between the parents over how to exercise their equal rights, the equal rights remain until a court decides otherwise. The legal test the courts must apply to decide this disagreement is what is best for the child, taking into account the child's wishes, and the conduct of the parents.[4] The court has a discretion to decide how best the parenting should be shared for the benefit of the child.

2. INFLUENCES ON WHAT IS BEST FOR CHILDREN AND HOW THEY AFFECT SHARED PARENTING

(i) The Mother Principle

Up until 1981, the mother principle dominated thinking when the parents separated and there was disagreement over parenting of the child. The mother principle, based on the belief of the time, said that young children need a mother, no-one can replace a mother.[5] Fathers were assigned to a lessor role.

(ii) Unacceptable risk of sexual abuse

Unless allegations of sexual abuse (which in the majority of cases are made against fathers) are removed, the court errs on the side of possible risk and restricts access. Thomas J in *S* v

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1 Professor Mark Henaghan, Law Faculty, University of Otago
2 A modified version of this paper is forthcoming in *Nuance*.
3 s6 Guardianship Act 1968
4 s 23 Guardianship Act 1968
5 Eg Woodhouse J in *G* v *G* [1978] 2 NZLR 444.

S[6] is the high water mark of this trend, the Judge said he must be "completely satisfied" before dismissing an allegation of sexual abuse. The value of child safety became overriding with the consequence that a parent who can not totally dismiss another parent's allegations having their parenting role limited and sometimes ended.

(iii) Presumption of Unsafety

A parent who has used violence against another parent is presumed to be unsafe to parent their children in an unsupervised way unless they can convince the court otherwise.[7]

(iv) The Happiness of the Custodial Parent

It was presumed for some time that the crucial fact for a child's well-being was for the custodial parent to be happy.[8] The consequence was that if the custodial parent (most commonly the mother) wanted to move with the child to another part of the country or overseas, they were generally given permission to do so. The other parent then had much less contact with the child.

3. CHANGES IN THE WIND

(i) Recognition of the Importance of the Relationship with the Access Parent

I carried out a survey recently of 75[9] cases where the parenting dispute was about a parent wanting to take the child to another district or country. From 1988-1998 63% of the applications were given permission to go. From 1999-2000 permission was only given to 48%. The reason for the change is recognition by the courts of the importance for the child of retaining an ongoing relationship with both parents – the closer the relationship the more dependent the child is on it.

(ii) Recognition of Shared Custody as the Fundamental Position

In a recent decision[10] Judge Inglis QC said that the assumption that a custody access regime provided the only available solution for separating parents is a misperception and needs to be corrected. Judge Inglis QC sets out the following template of how shared parenting can in practical reality be carried out:

> "Taking as the starting point the parents' status as guardians, their joint and equal legal right to the possession and care of their child, and their joint and equal obligations as guardians, it becomes an obvious necessity to consider the variables that will have an impact on how their joint responsibilities can in practice be carried out once they have separated. At one extreme there will be cases where the parents, though separated, are perfectly capable of exercising

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6 [1992] NZLR 803.
7 s 16B Guardianship Act 1968.
8 *P* v *P* [1970] 3 All ER 659.
9 The full analysis of the survey can be found in *Relocation Cases*, Henaghan, Klippel, Matheson, New Zealand Law Society, 2000.
10 *W* v *C* Family Court, Tauranga, FP 070, 21394, 23 June 2000.

> their guardianship functions and responsibilities on a joint basis of equality and are willing to do so. In such a case the question will be the best way of dividing the child's time between them with the appropriate flexibility made necessary by such matters as the child's routines, the child's changing needs with advancing maturity, and the inescapable work commitments of each of the parents. At the other extreme there will be cases where one parent is simply unable or unwilling to exercise any of his or her guardianship functions or obligations. In such a case, as a matter of necessity, the other parent is required to assume sole responsibility for those functions and obligations. The practical solution in such a case may often be to vest custody in the available parent, with the child having such contact with the other parent as may be helpful or desirable for the child.
>
> There will be a wide variety of cases falling within the limits of those two extremes. A typical example could be a case where the work commitments of one of the parents impose limitations on the amount of time that parent can spend with the child, but where that parent wishes to retain guardianship functions and responsibilities apart from day-to-day care. In such a case, to avoid dispute, management of guardianship issues for the child's benefit may make it appropriate to clarify the other parent's position with a custody order, if indeed any order is needed at all. Another example, also becoming unhappily typical in the Court's experience, is to be found in cases where one parent's behaviour exposes the child to an unacceptable degree of risk of physical or emotional harm. In such cases a balance needs to be found between the priority of protecting the child from that risk of harm while at the same time preserving the child's need for a continuing relationship with that parent.
>
> I do not consider it necessary to multiply examples. As already pointed out, there are endless variations in the circumstances affecting parents and child, and the parents' response — and, in the last resort, that of the Court — in each case needs to be conditioned by the individual facts and what will best suit the child's continuing welfare."

Judge Inglis QC said the starting point must be whether there is any valid reason relevant to the welfare of the child why the respondent's (father) legal right — identical to the legal right of the applicant (mother) — to exercise guardianship responsibilities and obligations jointly and equally with the applicant should be restricted. Generally courts have said that shared parenting where there is equality of sharing of custody (day-to-day care) works best where the parents are co-operative, where there is material support and a joint commitment by *both* parents to the idea of sharing. Judge Inglis QC goes further than the court has generally gone before and says that it is the responsibility and obligation of parents, as guardians, to "adjust their thinking" so as to ensure the criteria of co-operative, material support are met. It was held to be in the child's best interests (4 1/2 year old boy) to retain the full guardianship input of both his parents, appropriately managed so as to recognise that the parents are living in

different homes. The Court told the parents that it is their responsibility to respect each other's equal role, responsibility and obligations as joint guardians and to avoid as far as they can any disagreement on matters about the child's routine and upbringing generally. The judge made a "shared" custody order in the following terms:

1. As from 7 July 2000 the father will have [the child] in his care on each Saturday, from 9:30 am to 7:00 pm.

2. As from 28 July 2000 the father will have [the child] in his care on each Saturday from 9:30 am to 12:00 noon on the following Sunday.

3. As from 1 September 2000 the father will have [the child] in his care from 6:00 pm on each Friday until 6:00 pm on the following Sunday.

4. It is anticipated that by November 2000, when [the child] is to start school, the parents will have graduated to a position from which they will be able to make their own arrangements about [the child's] shared care, including, for example, an additional week-night at the father's home for a meal and an overnight stay. It is anticipated that the father's week-end contact with [the child] will be extended to picking up [the child] after school on the Friday and returning him to school on the Monday. There is nothing to prevent both parents being present on some of these occasions so that [the child] can see for himself that the parents can co-operate.

Judge Inglis QC concluded with the warning that if "obstruction, inconsiderate behaviour, subtle sabotage, unacceptable harassment, bullying, political grandstanding or insistence on the matters of principle occur, the child's welfare will be harmed and a different solution found". The practical outcome of this case, I am told on good authority, is that the arrangements did fall through, and the patterns of care as set out by Judge Inglis QC are not occurring. The problem may well be enforcement of court orders.

(iii) Judicial Views of Shared Parenting

There are a range of judicial views on shared custody, and whether it is good for children. Gault J says:[11]

> "Any arrangement by which a child spends substantial time with each parent has the potential for harm to the child arising from inconsistent activities, influences and living patterns. To reconcile these for the purpose of providing the child with stable and consistent support necessarily must involve substantial agreement and co-operation between the parents. These problems of course remain where children spend substantial periods of time with non-custodial parents exercising access rights. I think that difficulties are likely to be less when primary responsibility for the care of the child rests with one parent rather than with both."

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[11] *B* v *VE* (1988) 5 NZFLR 65, 70.

Judge McCormack says:

> "I do not support the concept of a week-about, shared care arrangement in principle, because I believe that the nomadic lifestyle it necessitates is ultimately disorientating, and destabilising for children."[12]

Principal Family Court Judge Mahony says:

> "Shared parenting is an expression which occurs frequently in case law in modern family law systems, to emphasise the joint parental responsibility for the care of the children which continues following separation. It is given expression in a wide variety of ways in individual cases. Viewed in that way, it is often the best option for the child involving the child spending significant time in the care of each parent on a regular basis. In relatively few cases, does it involve an arrangement based on moving the child from one household to another as part of a regular pattern, so that each parent can have equal time with the child.
>
> Such arrangements are often promoted in order to satisfy the aspirations of well intentioned parents rather than the needs of children. The constant movement from one household to another in the way which has been suggested in this case, can be disorientating and destabilising for growing children. Generally having one predominant home base as part of a secure and stable environment is an essential ingredient of welfare."[13]

Judge Bisphan says:

> "The nature and effect of conflict between the disputing adults will need to be assessed. Outright war would probably rule out joint custody. Minor disagreements (such as occur in the best regulated two parent families) might not. Conflict between parents which has little or no effect on a child may not preclude the making of a joint custody order."[14]

Judge Bremner says "you don't have to like each other but you have to work together".[15] Orders were made whereby the children lived on a turn about basis with each parent as a way of meeting the children's needs and resolving the parental conflict.

(iv) Overseas Experience

In both Australia and the United Kingdom, legislative changes have placed an emphasis on joint responsibility for children. The outcomes of these changes for parents and children are

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12 *Partlow* v *Garrett and Garrett* District Court, North Shore, FP 22/96, 2 May 1997.
13 *Mills* v *Mills* Family Court, Taupo, FP 059, 115, 99, 13 April 2000.
14 *Douglas* v *Beyese* Family Court, Christchurch, FP 009, 754, 96, 3 July 1998.
15 *Richardson* v *Simpson* District Court, Wanganui, FP 083/185/86, 19 April 1991.

still being assessed.[16] The findings are dependent to a great deal on the perspectives brought to the changes. The counselling/mediation professions have seen the changes in the most positive light. They believe the change in wording from custody/access to joint responsibility have lead to important attitude changes in separated parents where they are more likely to share decision-making and work closely as parents. These professions believe more education in how to achieve this ideal will create more shared parenting situations.

Lawyers are more skeptical about whether the changes have made any real difference. They have found that there is still a gap between the theory of shared parenting and the practice of it. In their view, there still is unwillingness by some parents to exercise their share of parenting, and there still is an unwillingness by "hostile" resident parents to share the care of the child with the other parent. Some lawyers are of the view that the joint responsibility rhetoric has created unrealistic expectation of "equal" time. Others are of the view that the rhetoric now makes it easier to persuade mothers to agree to contact for fathers. There is also the clear perception that domestic violence is down-played in the context of efforts to ensure that shared parenting can occur. In the United Kingdom, there are case examples[17] of mothers, who have been assaulted by their partners, imprisoned for contempt of court for refusal to comply with a contact order. We must accept that there are some situations where joint parenting is not an option and protection from harm is a more important value.

When it comes to interim court orders there have been changes. Judges are more likely to make joint residence orders at the interim stage so that no one party is advantaged. However, when it comes to final orders there has been very little changes. The common order is a residence/contact order (the equivalent of a custody/access order). The Judges are generally against ordering equal time because it is seen as too disruptive, and not workable for the children's needs. It is more commonly ordered when a child is young.

(v) So Where are We?

We already have in New Zealand law in the Guardianship Act 1968 the USA *equivalent* of joint custody, a starting point of equal rights to custody and decision-making which can be given away be agreement or taken away by Court order. Overseas experience has shown that changing the wording to joint responsibility does not necessarily make any difference in cases where there is serious conflict. What will make a difference is changes in attitude both by society and the courts as to the important role both parents play in a child's life. What will

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16 H Rhoades, R Graycar, M Harrison, *The Family Law Reform Act 1995: Can changing legislation change legal culture, legal practice and community expectations?* April 1999. C Smart, "The Children Act 1989: The English Experience" 9th Family Law Conference 3-7 July 2000.

17 See, for example, some of the following cases:
Re H (A Minor) (Contact) [1994] 2 FLR 776
Re O (Contact: Imposition of Conditions) [1995] 2 FLR 124
Re P (Contact: Implacable Hostility) (1996) *The Times* May 9
RE P (Contact: Supervision) [1996] 2 FLR 314
Moreover in the cases of *Z* v *Z* (1996) Fam Law 225 and Dawn Austin, *The Guardian*, 11 October 1996, the mothers, who had both been victims of violence, were imprisoned for refusing to facilitate contact.

also make a difference in cases where the child clearly will benefit from maximum contact from both parents is for there to be sanctions which change negative parental attitudes and behaviours. Where a parent who has the child in their care makes it difficult for a contact parent there are sanctions – such as a fine or even changes of care from the parent who is making life difficult to the other parent. This later sanction has been used by the Family Court[18] and maybe should be used more often. The same can be said of enforcement of access orders by warrant. None of this is ideal and it is always best that matters be resolved by agreement. But if they are not, and one parent decides to subvert the contact of another, the law must be seen to come down hard on such behaviour. The argument that this will affect the welfare of the child dos not stand up to scrutiny. The child's welfare is already suffering if access is denied to a capable parent. Provided that parent is an adequate parent, to change custody to them may actually alleviate suffering.

[18] Eg *Wheeler* v *Wheeler* [1985] 5 NZFLR 380.

Chapter Nine

CHILDREN'S RIGHTS TO BOTH PARENTS – THE STATE AND THE NON-CUSTODIAL PARENT

by Stuart Birks

"You can't change centuries of this inbuilt view that women have different roles in society."
Dame Silvia Cartwright[1]

My concern in this paper is for the nature of the information and reasoning in debate, policy formulation and policy implementation. It would appear that much of the general information gathered on family types is misleading, the information from government is slanted, the courts are poorly informed, there is little consideration or understanding of the impact of structures and processes, the wider social dimension receives scant attention, and we may not even be asking the appropriate questions.

HUMAN RIGHTS

The title of the paper refers to children's rights to both parents. There are numerous international conventions that support both children's rights to parents and people's rights to families. Some of these are listed and discussed in my paper on the Shared Parenting Bill[2]. I repeat them in the appendix to this paper.

THE INVISIBLE PARENT

There is a saying that "it takes a village" to raise a child.[3] While this might conjure up an idealised view of a society, it might be helpful to imagine how such a village might appear. We walk into the village and, seeing a child, ask, "Where do you live?" The child, being raised by the village, might answer, "Here in the village". So we might then be more specific and ask, "Where is your home?" If the village is raising the child, then surely both parents would be actively involved. In a fairly modern village, the parents might not live together, though. So the child might point to two homes and say, "There with my mum, and there with my dad".

If we walk into a village in New Zealand, what are we likely to find? Asked, "Where do you live?" the child would most probably point to a house and say, "There with my mum." We

1 Hewitson M (1999)
2 Chapter 5 of Birks (2000a)
3 Clinton (1995)

might also get the answer, “She is a solo mother, I live in a one-parent family”. If we ask where the child’s father lives, the child might still point to another house, but is unlikely to stay there often or feel particularly attached to the place. This is reflected in school exercises where children are asked to describe the people in their family and what they do. Such exercises may well be limited to those who live together in the same house.

The terminology that we use, “sole-parent family”, is based on a view of family defined to be living on one household. This perspective extends to the definition of family for the census and the time-use survey, and for benefit structures (but only partially for child support[4]). This means that non-custodial parents are not recorded as being part of their family. The definition of family used in the census, being based on a family as a subset of households, goes so far as to identify non-custodial parent’s children as part of a two-parent family if the custodial parent is in a live-in relationship with someone else. The census merely notes the adults in the household and does not distinguish between a new partner and a partner who is a natural parent to the children.[5] If our official data is unable to identify non-custodial parents and goes so far as to consider a natural parent and custodial parent’s new partner as indistinguishable, it is unlikely that we will be able to form an accurate picture of our family structures.[6]

It is worth noting that the concept of "family" in the international documents mentioned in appendix 1 is based on biological ties, not place of residence. Where parents who live apart are both actively involved in raising their children, in place of “sole parent family” it might be more appropriate to refer to “two-home children”.

GOVERNMENT

Here are two examples indicating the government's attitude towards non-custodial parents:

The Labour Research Unit[7]

The Labour Research Unit produced a document on the Shared Parenting Bill explaining why the Labour Party was opposed to the bill. It included the following case example:

"Dad earns $25,000, Mum part time 10 hours pw at $10 per hour. Children 4 and 6 years. After separation will only survive financially if Mum obtains the DPB or can somehow earn a professional salary. If 50/50 care both parents would need childcare - they could not afford it on their incomes."

There are some puzzling assertions in this example. After separation they "could not afford it" if there was 50/50 care. This suggests that Labour bases custody decisions on earnings.

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4 Payments are made from one household to another on the basis of a parent-child relationship, but the child is assumed to live only in one household if time in the other household includes less than forty percent of nights.

5 For more details, see pp.9-10 of Birks and Buurman (2000).

6 Note also the study by Fleming, described in chapter 6 of this publication, which found that step-parents do not replace natural parents.

7 A version of this section was published as Birks (2000b).

We could question whether a parent's higher income is grounds for awarding custody to the other parent, and why a mother would need "a professional salary" or the DPB. How does this approach fit with "the best interests of the child" being the overriding criterion?

The example seems to assume sole custody should be awarded to the mother on the basis of earnings. There are other options.

Each could work part time. 40 hours pw at $10 an hour gives an annual income of about $20,000, so the actual difference in earning capacity is not even so great. Why is it assumed that the mother would not work more if there is 50/50 care?

The extended families could both be involved, with grandparents caring for the children sometimes, for example. Sole custody potentially halves the child's extended family.

There are additional options over time with shared parenting, with both parents maintaining and possibly enhancing their earning power, and one or both could get more qualifications.
If, as is claimed, the separated family is only financially viable if the mother has sole custody, presumably the father would be unable to support another family. If so, then Labour's view of the future for such a family is for the mother to spend years on the DPB and the father to have a life alone, financially supporting a family he may rarely see.

The Guardianship review

In August 2000 the Ministry of Justice released a discussion paper, *Responsibilities for Children, Especially When Parents Part: The Laws About Guardianship, Custody and Access*. In the foreword, Associate Minister of Justice, Hon. Margaret Wilson, and Minister for Social Services and Employment, Hon. Steve Maharey, stated that they, "want to encourage thinking about the law and how the Family Court works" (p.3). Several questions were raised in the document, and Appendix 1 of the document is claimed to give overseas examples of laws "which may provide some good ideas and some warnings for New Zealand" (p.18). The information is patchy, to say the least. Rather than describe laws, it makes claims such as, "Research on the US's approach to joint custody shows that it can work, but only if both parents agree on it" (p.19). No source was given for this claim, but on request I was advised by the Ministry that it was based on one paper, Hardcastle (1998). I shall consider this paper in some detail given the weight given to it in the discussion paper.

It is a concern not only that the Ministry of Justice paper relied on only one paper for its claim about US research, but also that the paper presents a judge's perspective, as this may arise from narrow and unrepresentative exposure. The Department for Courts was not so accepting of judges' opinions in its study to determine if they had an appropriate understanding of gender issues[8].

[8] Barwick *et al* (1996).

Interestingly, Hardcastle reported from a 1993 source that dual physical custody was awarded in 20 per cent of **disputed** US cases. He also lists reasons given by judges for their concerns about joint custody, before claiming that, "No judge should accept joint custody without examination" (p.202). This illustrates problems that can be observed with legal reasoning[9]. By listing possible disadvantages, but not mentioning the advantages, only one side is presented.

It is not enough to identify problems with joint custody – any situation can have difficulties. There must be a point of comparison. What are the difficulties with sole custody, and which, in any particular case, is likely to be the least undesirable? Little thought is commonly given to the difficulties of re-establishing a severed relationship, although this can be a significant factor with sole custody decisions. Joint custody arrangements can always be changed to sole custody. It is much harder to have change in the other direction.

By setting up the issue of whether to accept joint custody rather than whether to reject it, the burden of proof rests with those favouring joint custody. This is surprising given various international conventions relating to families which would suggest that family relationships should not be disrupted or severed without good reason and due process[10].

Hardcastle's stance could suggest some quite unusual thinking. He (and others) set the scene in terms of arguing that a switch to favouring joint custody should only be allowed if shown to produce beneficial outcomes according to selected indicators such as school performance, or lower teenage pregnancy or crime. Would we place the same requirements to justify parents' attendance at a prize giving or sports event, or giving a child a birthday party or Christmas presents? If we do these things for other reasons, shouldn't the Court also place some value on those reasons? Should we be using the law to prevent such involvement on the basis that the child will perform satisfactorily anyway? This is the implication of a sole-custody regime. The alternative to Hardcastle's position would be to contend that, "no judge should **reject** joint custody without examination".

While Hardcastle is critical of joint custody laws being made "without the benefit of a study", he describes legal presumptions that have held in the past in determining best interest of the child. There is no mention of studies in those cases, nor is it clear how judges are, with little or no guidance from legislation, in a position to determine the best interest of a child. It should not be presumed that prevailing judicial preference for sole custody in contested cases

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9 See Birks (2000c).

10 See Appendix 1. Notably, although many of the extracts in the Appendix were used by the Human Rights Commission to justify unequal splitting of matrimonial property, the HRC has not been equally vocal on shared custody. There is an HRC report, *Equal Parental Rights: Report on Representations by Equal Parental Rights Society*, issued in April 1982. It does not even consider the option of shared custody, discussing sole custody only. *"If the matter was approached strictly in terms of the rights of the child then he or she could be said to be entitled to the constant love, care and company of <u>both</u> parents on a continuing basis. What the law has to deal with, however, is the situation where the parents have decided, or at least one has, that they are not going to live together to provide a full continuing family relationship for the child."* (p.2) *"…what is to be considered is essentially a legal question. Who is to have the right, <u>and the obligation</u>, to have custody and care of a particular child."* (p.3)

is well informed and backed by suitable studies. Moreover, he does not discuss the changing scale of the issue in response to changing grounds for divorce, divorce rates and ex nuptial birth rates. Should it be considered a "micro" issue affecting individual families only, or a "macro" issue with wide-reaching social implications?

Hardcastle discusses five issues in the joint custody debate. While he notes the difference between joint legal and joint physical custody, he fails to maintain this distinction in his discussion of research on joint custody. The Ministry of Justice uses the term joint custody in its physical custody sense only. Hardcastle sets the requirement that joint custody be proved better, despite limitations to studies (problems with samples, lack of control groups, etc.), rather than the requirement that good cause be shown to reject joint custody as the default outcome. To take his five issues in turn:

i) Parental satisfaction – he uses results from joint legal custody studies.

ii) Children do better with two parents – it is suggested, quoting research by Maccoby published in 1993, that children suffer more if there is conflict, but a 1996 publication co-authored by Maccoby gives a different picture: *"Interparental hostility, as reported by parents one year before the adolescent interview, was associated with higher levels of depression among dual-resident adolescents, and for the girls, with lower school grades. In general, however, the effects of interparental hostility were not as pervasive as they were for adolescents in sole residence. It is possible that a number of the parents who have managed to sustain a dual-resident arrangement have found ways of insulating the children from their interpersonal conflict."*[11]

iii) Child adjustment – *"The research on child adjustment is less than conclusive. While some literature supports the conclusion that joint custody arrangements tend to produce better adjusted children, other research reflects no significant difference"* (Hardcastle, p.211). Hardcastle concludes, *"the present state of research regarding child stability and adjustment cannot justify a preference policy for joint custody."* (p.212) To an economist, this is a surprising claim. Consider his finding in relation to the alternative of sole custody. Hardcastle is saying that some research shows no significant difference, but other research shows that children in sole custody are **less** well adjusted. In other words, a change in policy towards joint custody could result in children being better adjusted, and there is no evidence that they would be worse off. Surely this is reason enough to favour joint custody, not to reject it. Hardcastle also describes one 1983 study finding a third of children with loyalty conflicts and a quarter children who were "unhappy over the arrangement". This means that a quarter of those with loyalty conflicts were not unhappy. He does not consider loyalty conflicts or related effects on children in sole custody, or how the unhappy children might have felt under another arrangement. In any event, is child-stated happiness the right measure of adjustment?

[11] Buchanan, Maccoby and Dornbusch (1996), p.102.

iv) Payment of child support – To quote Hardcastle: *"Most research concludes that type of custody does **not** most accurately predict payment of child support or the amount received as child support."* (p.213), citing a 1988 publication. *"…joint custody fathers pay less child support relative to income than non-custodial fathers."* If he is referring to joint physical custody, it is amazing that he set the requirement that child support payments should be at least as great as those by fathers who may never see their children. If he is referring to joint legal custody, then it is not relevant to the Ministry of Justice case.

v) Conflict – according to Hardcastle, *"…the residential custody has little bearing on the amount of conflict between divorced or divorcing parents"* (p.215) If this is the case, then according to the quote in point (ii) above, joint physical custody is to be preferred.

In summary, Hardcastle does not present a convincing case.

Also of note, part IV of Hardcastle's paper discusses process. Without using the term, he describes the effect of "the shadow of the law" when stating that *"joint custody legislation places pressure on litigants to negotiate a joint custody arrangement"* (pp.217-8). This is a major point made by those in New Zealand arguing **for** joint custody, as they contend that a preference in law for sole custody also places pressure and affects outcomes. The point is lost on the government and its advisors, however. They repeatedly claim that court outcomes are not of general relevance as only a few cases are resolved in court. See, for example, statements in the foreword to the Ministry of Justice's discussion paper, in chapter 2 of this publication, and in news releases by the Law Society quoted below.

The Ministry of Justice discussion paper also described as a US method, the primary care-taker approach, where "the judge has to make decisions based on who they think was the parent who spent most time carrying out the day-to-day child care tasks before separation." (p.19)

We see similar reasoning presented as the sole option in a publication from the OCC.[12] However, Kelly (1997) states that: *"Child development research does not support the distinction between primary and secondary caretakers for children after age 4 or 5 if they have lived in the two-parent home."* [13]

In summary, the Ministry of Justice discussion paper is not informing, it is misinforming. We should be concerned that such misinformation is being presented by the government as a basis for submissions. Resulting submissions may be provided by equally ill-informed parties, yet it will be from these that policy will be made and justified.

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12 See p. 32 of Julian (1999).

13 P.383 of Kelly (1997). The primary caregiver concept is also discussed in Birks (1999).

THE FAMILY COURT

The Family Court has a major influence on the situation of non-custodial parents. In this section I shall consider some indicators of the Court's stance.

Expertise

The Court is presented as a repository of knowledge on its areas of operation. To quote two published decisions:

"…the development of the Family Court and the special skills and experience possessed by the Judges sitting in that jurisdiction." [B v VE, NZFLR, 1988, p.66]

"…the appeal Court should recognise the specialised insights, skills and experience of Family Court Judges." [Haslett v Thorndon, NZFLR, 2000, 200, p.205]

This is misleading. The Court does not have a research base, nor are the lawyers involved required to have specific training in such relevant issues as child development, the impact of family structure, or the effects of court interventions. Rather they are able to operate in isolation, with little or no outside assessment, and with full control over any outside "expert" advice they may choose to consider. In some areas, notably parental alienation and the shadow of the law, the Court appears to be particularly blinkered.

The Hardcastle discussed above is a US example of a judge's view and reasoning. New Zealand's Principal Family Court Judge, while declining to debate or respond to criticism, is prepared to make pronouncements.

The Principal Family Court Judge on conflict

Haines reports on Principal Family Court Judge Patrick Mahony in the Dominion[14]:

"Judge Mahony … said research during the past 10 years 'quite clearly' pointed to marital conflict as the main cause of maladjusted children.
Children modelled the bad behaviour of their parents and exposure to domestic violence often led to signs of post traumatic stress disorder, he said."

These sweeping statements deserve some critical consideration. On the issue of conflict:

1) Is the research talking about marital conflict, or conflict in general, including that post-separation? According to Haines, Mahony is referring solely to the former, stating that, "Unhappy marriages – not divorce – could be the main cause of behavioural problems in children and adolescents". However, it may be that researchers are taking separation itself as a sign of conflict.

2) What degree of conflict is necessary for maladjustment?

[14] Haines (2000).

3) Are all separations associated with conflict relationships?

4) If there is conflict at one time, does that mean that there would be conflict at another? [15]

5) Is conflict after separation due to the one-sided approach of a court which favours sole custody and the adversarial approach taken by lawyers? Does the requirement for each to parent to show that they are better than the other, or even that the other's parenting is harmful for the children, encourage criticism and fault-finding?

If children model behaviour, why consider only that of violence between parents? What lessons are they learning from separation and the approach of the Family Court? Some possible lessons are that:

1) If you have a problem, you should cut off contact (so a small matter may be inflated and never resolved).

2) One parent has all the say.[16]

3) A parent can be made to pay child support in a one-sided arrangement with no rights in return, nor any obligations on the receiving party.

4) Court orders (such as for access) can be disregarded without penalty.

5) Smears, and false and unsupported accusations can be made and heeded by the Court without investigation (Guardianship Act 1968, section 28).

6) A parent can be faced with whatever restrictions the Court chooses to impose (Guardianship Act 1968 sections 11.2 and 15.2.a). The Court need give no justification. Non-custodial parents in particular may be left with no parental authority and would therefore be unable to fulfil their parental responsibilities.

These lessons would affect children's views of the present and their current relationships with their parents. They are unlikely to be aware of the institutional environment which affects what their parents can offer, but rather they would judge each parent simply in terms of what they do. Their experience would also shape their expectations of adult life and future

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15 On this and the previous point, Leo (2000) reports on a study by Paul Amato and Alan Booth which found that, from a sample of 2000 married people, *"just 30 percent of divorcing spouses reported more than two serious quarrels in a month, and only 25 per cent said they disagreed 'often' or 'very often'."*
Leo also reported findings by Linda Waite, using data from the US National Survey of Families and Households, that *"86 per cent of people who were in bad marriages, but who decided to stick it out, said five years later that their marriages had turned around and were now happier. Sixty per cent said their marriages were 'very happy'."*

16 Judge Inglis has said that "…a parent who is deprived of the right of custody is in reality left with only the shell of guardianship". P.264 of Dadelszen (1995).

relationships, and of treatment by the state (as in either a "benefit mentality" or enforced payment with no rights, for example).

The implication of Mahony's statement is that children whose parents are in conflict may benefit from separation. However there are numerous possibilities would have to be set aside for this implication to be accepted.

Some researchers suggest that cutting off contact (because of conflict or for other reasons) may be giving the same problems as conflict itself:

"…several theoretical and empirical analyses suggest that an important mechanism by which parental conflict contributes to behavior problems and/or psychological distress in children is through the disruption of healthy parent-child relationships (references)."[17]

In other words, the problem is not divorce, but conflict, and, digging deeper, it is not conflict, but the disruption of the relationships. A separation that results in a parent becoming non-custodial could be turning a short term difficulty into a long term one, not solving the problem, but setting it in concrete.

Lamb *et al.* make the following point:

"Disagreements are part of any relationship, and exposure to conflict is not necessarily harmful to children. Indeed, exposure to parental conflict can have salutary effects on children when they are able to observe and learn from the constructive resolution of manageable conflict. By contrast, exposure to destructive and unresolved conflict (especially when it is focused on the children) places children at increased risk of behavioural and psychological maladjustment…It thus becomes important for professionals working with divorcing families to guide disagreements and conflicts towards constructive and explicit resolutions."[18]

Instead, the Family Court attempts to eliminate conflict by giving all say to one parent. This can lead to loss of relationship with the other parent and unresolved issues. Quiet (or lack of litigation, say) does not mean that there is no conflict. Rather it may simply mean that the conflict continues unresolved. Similarly, a child's reluctance to see a parent as a result of parental alienation can be addressed through ending contact, but the result could be greater problems in adult life.

Moreover, "Karp…found that children in sole care had more conflicts with their parents compared with children in shared parenting."[19]

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17 Buchanan *et al.* (1996), p.205.
18 P.398 of Lamb *et al.* (1997).
19 Tornstam (1996).

In summary:

- We should not assume that all separations are of relationships experiencing open conflict.
- We should not assume that all conflict relationships are permanently in conflict.
- We should not assume that all conflict is unresolved, harmful conflict.
- We should not assume that elimination of conflict through disengagement of parents involves no harmful effects.

Mahony refers to both conflict and violence. The prevailing view is of patriarchal power and control, as described by the Duluth Wheel. It assumes male violence based on a power imbalance favouring the violent male. From this perspective, the solution is removal or a reduction in the power of the male. A very different view is suggested by Miles:

"It is often a paradox to outsiders that the parents who shout the loudest, strike out at the least provocation, hit the hardest and threaten the worst penalties are those who have the least real authority within their families."[20]

It may be that the Court increases the potential for violence by creating power imbalances.

Judges and decisions

Henaghan presents evidence of a changed stance by Judges, suggesting that they now view shared custody more favourably than in the past. While such a shift is clearly occurring, its effect may in practice be limited and it is not universally observed. To illustrate, I draw on two cases, one from 1988 and one from 2000. These are the same two cases quoted above on the special expertise of the Family Court:

"Any arrangement by which a child spends substantial time with each parent has the potential for harm to the child arising from inconsistent activities, influences and living patterns…I think that the difficulties are likely to be less when primary responsibility for a child rests with one parent rather than both." [21]

"…the reality is that [G] has the appellant as a father who is very much part of his life. It is only in the day-to-day choices and events of living that – as with every separated parent – one parent alone is of necessity involved." [22]

In the latter, most recent, case, the Judge argued that the father could not expect to be involved in minor issues, but could expect a say in major ones, hence:

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20 Miles (1994), p.92.
21 B v VE [NZFLR, 1988, pp.65-74], p.70
22 Haslett v Thorndon [NZFLR, 2000, 200], p.207

"Major matters, which are truly guardianship matters such as…choice of schools…are matters on which both parents should agree or failing agreement be subject to direction by the Family Court." [23]

However, even on the issue used as an illustration, the father's lack of involvement in the discussions between the child and the custodial mother, a series of "minor" events, excluded him from a say even in that matter:

"…we think the schooling position is really settled by the child himself." [24]

It is surprising that the Judge used choice of schools as an example, having already ruled out any input by the father. The Judge displayed further insensitivity to the situation, saying in reference to a previous Family Court Judge's decision in the case that:

"The [Family Court] Judge observed that the communication between the parents was poor (to say the least) but that was something in which the Courts could not help..." [25]

Might it not be the case that the stance taken by the Court encouraged the mother in not communicating as much as the father wished?

In both these cases, where the fathers were excluded from an effective parenting role, the Judges included high-sounding but hollow statements:

"I think there has been a failure by both parties to recognise that it may be more important to concentrate on the quality of their relationships with David than on the amount of time he spends with them." [26]

"The task of the Court is to, as best it can, promulgate orders which will best advance the welfare, in its broadest sense, of this child not only for the immediate present but also for the long-term future." [27]

The Family Law Section of the New Zealand Law Society

In two recent media releases the Family Law Section of the New Zealand Law Society shows a complete disregard for the effects of the shadow of the law. Laws are routinely made to change people's behaviour. Decisions in other courts are made so as to "give a signal" to people and to affect behaviour. However the Family Law Section claims that the Family Court has no wider impact whatsoever:

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23 *Ibid* p.210
24 *Ibid* p.208
25 *Ibid* p.203
26 B v VE, p.69
27 Haslett v Thorndon, p.206

In a release dated 26 April 2000 on the Shared Parenting Bill, we see the following:

"Furthermore, the Bill seems to ignore the fact that the vast majority of parents seem to be able to find sensible and pragmatic solutions to the problems posed by family separation without resort either to lawyers or the courts. The Section is concerned that substantive law changes are being promoted as a response to a relatively small number of difficult cases."

And in a news release dated 6 October 2000, the then Chair of the Family Law Section, John Priestley QC, stated:

"The large majority of separated New Zealanders put their own joint parenting arrangements into place without any need for intervention by lawyers or the Family Court."

In the previous section I quote judges who are actively preventing the parenting involvement of non-custodial parents. Somewhat surprisingly, these two releases claim that the Court aims for far more balanced outcomes. To quote from the two releases in turn:

"The current legislation and the way in which it has been implemented by the Family Court strongly supports the proposition that it is in the best interests of children to be able to maintain a meaningful and positive relationship with both parents."

"… the New Zealand Family Court is a world leader in encouraging conciliation."

Are we expected to believe this? For example, I have been informed of cases where lawyers in the Family Court have acted, without any authority, to influence schools to disrupt children's relationships with non-custodial parents. In these particular cases neither the Law Society nor the Family Court did anything to penalise these lawyers, nor did they acted to remedy the harm done.

IMPLICATIONS

Policy is currently being made and implemented in an environment of limited and misleading information. Claims are being repeatedly made which simply do not stand up to critical assessment. The information provided by government as part of a consultation process is poor and slanted. Lawyers and the courts are acting on dubious grounds and with questionable beliefs. There does not appear to be any consideration of the impact of actions and decisions, and the wider social implications of policies in relation to families are given little or no attention. Signals are being given which will have a significant bearing on the attitudes and behaviour of people in the future. These matters merit more serious attention than they have been given to date. As it stands, we may not even be looking at the issues in an appropriate way, or even asking the relevant questions.

APPENDIX

From the United Nations Convention on the Rights of the Child (UNCROC):

- **Article 5** says that: *"States Parties shall respect the responsibilities, rights and duties of parents … to provide … appropriate direction and guidance"*.

- In **Article 7** we see that: *"The child shall … have …, as far as possible, the right to know and be cared for by his or her parents"*.

- **Article 9.1** states that: *"States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child."*

- **Article 9.3**: *"States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests."*

- **Article 14.2** says: *"States parties shall respect the rights and duties of parents and, if applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child."*

- **Article 18.1** makes the State's obligation to support both parents explicit: *"States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern."*

- **Article 18.2** requires the State to develop appropriate institutions, which would include the Family Court: *"For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of the child."*

- **Article 19.1**, referring to mental violence, could be considered to apply to emotional abuse in the form of parental alienation: *"States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child."*

There are other internationally specified rights which merit consideration. From the submission of the Human Rights Commission to the Government Administration Services Select Committee on the Matrimonial Property Amendment Bill 1998 and the De Facto Relationships (Property) Bill 1998, July 1998:

"Article 16(1) of the Universal Declaration of Human Rights provides that men and women of full age have the right to marry and found a family; and relevantly they are entitled to equal rights as to marriage, during marriage and at its dissolution. Article 16(3) provides that the family is the natural and fundamental unit of society and is entitled to protection by society and the state."

"International Covenant on Civil and Political Rights ... Article 17 provides that no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence."

"Convention on the Elimination of Discrimination Against Women [CEDAW] ... Article 16 provides that States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women: Article 16(f) ensures the same rights and responsibilities during marriage and at its dissolution."

Article 5 of CEDAW is also relevant:
States Parties shall take all appropriate measures:
To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;
To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.

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Chapter Ten

THE TREATY AND THE RIGHTS OF THE CHILD -THE CASE OF HEPATITIS B

by John Waldon

ABSTRACT

The policy forum "*Children's Rights and Families*" provided speakers with the opportunity to present a number of perspectives on the needs of children and families. The conference speakers described how to give effect to Article 18 of *The United Nation's Convention on the Right's of The Child* by bringing together research, practice, and policy. The topic of this paper considers the relevance of the Treaty of Waitangi, more specifically Te Tiriti o Waitangi. The Government of New Zealand, as agent to the Crown, is a signatory to this and many other conventions such that the Government has undertaken a duty to "create the conditions" to protect the child.

Te Tiriti o Waitangi, an internationally recognised treaty, was required to legitimise the establishment of a settler government. Importing English law created a set of rules that transformed a host of Maori nations to a country. New Zealand struggles with its own responsibilities to children. The purpose of the paper is to present a framework for development.

The Treaty of Waitangi has provided a premise on which the Government could act to provide for Maori health needs. The principles identified by the Royal Commission on Social Policy's *April Report* (1986) underpin a framework to describe how New Zealand may determine children's needs. The case of hepatitis B illustrates how the notions of advancement and development can be used to better understand the needs of Maori. Hepatitis B provides a challenge for health policy. The Government's response to Maori health needs has been moderated by the pressure of balancing the development of new health services with existing services.

It is proposed that a Treaty-based partnership may provide a framework with which the Government may meet the needs of those children who do not benefit from the Government's desire to address health inequalities.

INTRODUCTION

Article 18 of *The United Nations Convention on the Rights of the Child* (The Convention) provides the Government with the responsibility to:

" ...ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child..... "

and that:

"The best interests of the child will be their basic concern."

This paper's topic is the Treaty of Waitangi. The relationship between Maori and the Government has become an unequal partnership that is quite different to Maori expectations of Te Tiriti o Waitangi (Orange 1987). The needs of the children of New Zealand require action by the whole country to ensure that no child will fall between the gaps of factional intervention and piecemeal effort. Also missing from the debate is the voice of the child and their views. This paper will consider some of the health needs that arise from the transmission of hepatitis B.

The health and well being of children is undoubtedly a priority for any Government. Law generally provides sustained subtle pressure on all people, for those who transgress, the pressure is substantial, and sanctions are often imposed. What happens when the rights of a child are transgressed? A rhetorical question, perhaps, but one that requires further explanation and perhaps a strategy to answer.

The history of the Treaty of Waitangi is well covered in the literature (Orange 1987, Durie 1998, Durie 1998a). I would like to make two points; there are two versions of the Treaty; and the Government is required to give equal weight to both versions in the Treaty of Waitangi Act 1975 (Durie 1998). The understanding of Te Tiriti o Waitangi, as described by Kawharu (Pomare 1995, p. 170-171) is substantially different to The Treaty of Waitangi. The difference, in part, explains why Maori treaty expectations are different to that of the Government.

The Royal Commission on Social Policy identified three Treaty based principles, *partnership, participation, and protection* (Durie 1998, pp. 84-88). The fourth Labour Government had the Treaty as the centre-piece of their Maori policy (Durie 1998, pp. 88-90). The Labour Government developed Crown principles for action on the Treaty of Waitangi to guide Crown action. These principles were unlike earlier principles developed by the Waitangi Tribunal, the Court of Appeal, and The Royal Commission on Social Policy (ibid).

Health inequalities (the gaps) are used to characterise the health status of Maori when compared with non-Maori. This is the same for Maori children and it is an aspect of this inequality experienced by Maori children I will explore in this paper.

POMARE AND MAORI STANDARDS OF HEALTH

Health is an enduring and significant policy area for Government (Ministerial Planning Group, 1991; Health - Minister of 2000). The Hui Whakaoranga, the first national health hui since perhaps the hui at Kohimarama (1860), established strong roles for Maori in setting health priorities and health providers. *Hauora Maori Standards of Health* highlighted Maori health needs and provided a Maori analysis, that until this report, had largely been occult[1] to policy makers (Pomare 1980, Pomare and de Boer 1988, Pomare, E. Keefe-Ormsby, V. Ormsby, C. Pearce, N. Reid, P. Robson, B. & Watene-Haydon, N, 1995). Acknowledgement of Maori health needs by Simon Upton (Minister of Health, 1991) increased demand for health policy to address Maori health concerns. The National Advisory Committee on Health and Disability (NHC) describes a strong association between health inequalities, social and economic inequalities (NHC, 1998).

Comparative Health Status

Maori health has been greatly affected by poverty and land alienation since the time of the Treaty of Waitangi (Pool 1991). The result has been a consistency in health inequalities experienced by Maori (compared with non-Mäori). Maori consider this as a breach of the Treaty (Pomare, E. et al 1995). Maori life expectancy has improved during the twentieth century, however concern remains that progress on closing the gap has slowed (Statistics New Zealand, 1998) and a suspicion that some gaps may even be widening (Reid & Robson, 1998). Reid and Robson were concerned that some specific causes of morbidity and mortality persist. These causes include sudden infant death syndrome, accidental death and injury, rheumatic fever and rheumatic valve disease, diabetes, asthma, lung cancer, hepatitis B and heart disease (Pomare et al, 1995; Health - Ministry of, 1998).

The Health Reforms

The health reforms of the 1990s were part of wider social and economic policy reforms processes introduced by government. These reforms have encouraged Maori participation in the health sector as independent providers and would therefore be seen by Maori as evidence of a Crown commitment to rangatiratanga (Durie, 1998, p. 147). However, greater participation by Maori was also consistent with the devolution of responsibility within government policy. By meeting a wider government agenda relating to the location of risk within communities with few resources, the potential advantages of devolution could be undermined (loc cit).

Whaia Te Ora Mo Te Iwi

Of particular importance to Maori health policy in the 1990s was the report *Whaia te ora mo te iwi* (Health -Department of & Te Puni Kokiri Ministry of Maori Development, 1993). Having the status of the Crown's objective in Maori health, *Whaia te ora mo te iwi* was dominant over Maori health policy for much of the 1990s. *Whaia te ora mo te iwi* influenced public health policy, as described in *He Matariki* (Public Health Commission, 1995), and shaped subsequent policies implemented by Regional Health Authorities (RHA), the Public

[1] Hidden

Health Commission (PHC) and the Health Funding Authority (HFA). The Maori health objective states simply that:

In the future, Maori will have the opportunity to enjoy the same level of health as non-Maori (Health -Department of & Te Puni Kokiri Ministry of Maori Development, 1993).

The opportunity was now open for developing specific policies to meet the needs of Maori. Few resources were allocated specifically to Maori health. Although the Minister of Health (loc cit) expressed a desire to improve the health of Maori, Maori health remains a small component of overall health funding with less than 1% of the total budget, $ 40 million (Te Heuheu, 1998) of $ 5013 million of Vote Health committed to Maori provision[2]. It seemed the Government was unable to fund specific Maori health initiatives. Lack of funding may have been due to lack of policy. Policy is required to translate the intentions of the Minister of Health into objectives for providers to meet. The translation of the Minister's intentions for Maori appeared problematic. Cunningham and Taite observed that the policy makers dealing with Maori health policy had no clear understanding of its features (Cunningham & Taite, 1997). They indicated Maori policy would differentiate between all policy that impacts on Maori in some way, and Maori analysis that: supports health gains for Maori (policy outcomes); is responsive to Maori needs expectations (policy outcomes and policy development process); and is analytically sound (policy development process) (ibid).

DEVELOPING MAORI FRAMEWORKS

Cunningham and Taite (1997) indicated a Maori analysis is as fundamental to the development of policy within Government agencies as an economic analysis in order for policy makers to advance Maori health (ibid, p. 4).

Maori Development and Advancement

Durie described Maori health advancement using a development approach (Public Health Commission, 1994). Durie indicated there were links between economic, social and cultural development (ibid, p. 2). The philosophy of Maori health development focused on the dual strategies of development (Maori Development) and advancement (Maori advancement) to address disparity by advancing progress on achieving outcomes. Outcomes were to be set in terms of socio-economic advancement, self-determination and Maori management, and enhancement of mainstream (all other) health services (Durie, 1998, p. 181-182).

Maori Development

Maori development[3] has been confused as a process, an outcome, or a mixture of the two. Maori development is an on-going process through which Maori seek the cultural integrity,

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2 This excluded funding for Maori within Pakeha mainstream services such as Crown Health Enterprises.

3 As a process, Maori development is dependent on organisational structure, sound mandate, and wide representation. There are therefore unique implications for the administration, funding, and organisation of Maori development. Maori development may inform Maori advancement where

social and economic well being, and mutually beneficial partnerships (Durie, 1998, p. 182). Maori development has itself undergone a genesis, from development of hapu in pre-European nationhood through to present day Maori nations within a parliamentary democracy.

Maori Advancement

For the purposes of this paper Maori advancement[4] is a process operating in tandem with Maori development. Focused on addressing issues of disparity, Maori advancement has significant Treaty of Waitangi implications in terms of citizenship. Equity has been a major component of Maori advancement, and can be described as,

- equity of access,
- equity of utilisation and,
- equity in quality of care relative to needs.

(Kransnik 1995)

Equity of access and equity of utilisation can be outcome measures in their own right. The goals for Maori development and Maori advancement may not always be equity focused as a process, or as an outcome, because Maori goals may not always be the same as non-Maori.
Maori development and Maori advancement may be seen as processes by which Maori can influence Maori development in terms of Maori centered and instigated initiatives (Maori development), and advancing Maori issues though best providers and strategies (Maori advancement). Maori health development could be advanced with progress on achieving outcomes in terms of socio-economic advancement, self determination and Maori management, along with the enhancement of mainstream [all other] health services (Durie, 1998, p. 181-182).

HEPATITIS B

The biochemical markers for hepatitis B were first characterised by Zuckerman in an aboriginal man from Australia. Hepatitis B has been described as a poor outcome for Maori by the Ministry of Health, other policy advisors and a programme evaluation (Pomare, 1985; Webb-Pullman, 1990; Health - Ministry of, 1995; Working Party on Hepatitis B, 1996; Martin, A., Moyes, C. D., Lucas, C. R., Milne, A., 1996). Pomare found that there was little research published that described health outcomes for hepatitis B in New Zealand, so overseas experiences were drawn upon (Pomare, 1985).

In 1984, a mass vaccination programme was undertaken in the Eastern Bay of Plenty (EBOP). Comment from the then Minister of Health, Hon. Michael Bassett led to the special investigation by then Associate Professor Eru Pomare (Pomare, 1985). Pomare concluded

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new tools and strategies have to be developed, or where the solutions are beyond the direct influence of Maori. Maori development is an expression of tino rangatiratanga.

[4] "Maori advancement is an outcome focused process relying on determining where disparity limits Maori development, setting goals and strategies for measuring performance and monitoring achievement along the way. Advancement is a process through which Maori may enjoy the same fruits of citizenship as other New Zealanders." Waldon (2000), p 37

hepatitis B was New Zealand most serious viral infection and an important cause of morbidity and mortality, particularly in the EBOP (ibid, p. 9; pp. 57-60). Pomare investigated community funding[5] of the vaccination of susceptible school children.

Like the rest of New Zealand, Maori were offered delayed choices of prevention. A child born to an infectious hepatitis B carrier mother had a 90% chance of becoming a hepatitis B carrier (Pearce N, Milne S, Moyes C., 1988). High hepatitis B infection rates were expected for Maori and many papers were cited by the Working Party in their report to the Director General of Health (ibid, p. 17). What made the matter most serious for Maori is that there were higher chronic hepatitis B infection rates for Maori when compared with non-Maori who had died of liver cancer (Blakely T. A., Bates, M. N., Baker, M. G., Tobais, M., 1999).

High rates of infection for Maori were known as early as 1980 (Milne, A., 1980). The protective efficacy of hepatitis B immunoglobumin (HBiG) was known since 1978 (Beasley, R. P., Stevens, C., 1978, Hepatitis Control Trust and Whakatane Hospital, 1985). However hepatitis B carrier mothers were not offered the opportunity to protect their babies who were at very high risk from maternal infection of hepatitis B (Pearce et al, 1996). Subsequent policy on hepatitis B included the choice of hepatitis B vaccine to children of 'carrier' mothers in the EBOP, April 1985 (Pomare, 1985, p. 4), and six months later to most of the North Island, and all neonates from Northland to Gisborne in 1987 (Patel, personal communication, 1992). The hepatitis B vaccination programme was extended to all children under five in 1988 in a national campaign (Milne, A., Moyes, C, D., Waldon J., Pearce, N. E., Krugman, S., 1990). The programme was offered two years after the immunogenicity of reduced doses of hepatitis B vaccine had been proven (Milne A., Allwood, G. K., Pearce, N. E., Lucas, C, R., Krugman, S., 1986).

The national preschool programme was provided three years after many people in the Eastern Bay of Plenty, the subject of a ministerial inquiry, had agreed to pay for their own (Pomare 1985). Currently (2000) all children under the age of eighteen years and the household contacts of hepatitis B carriers are eligible for free hepatitis B vaccine.

MAORI POLICY ANALYSIS

Hepatitis B has had a relatively short serological history in New Zealand where the disease was prevalent and accepted as inevitable in the Eastern Bay of Plenty (Milne, personal communication 1988). The natural history of hepatitis B was postulated prior to the discovery of serological markers (blood based indicators of infection history) in the late 1970s.

There were few Maori directly involved in the policy analysis, research, and management of hepatitis B. Associate Professor Eru Pomare, as a special investigator, supported the

[5] The programme had raised $ 160,000 (Pömare, p. 53), and was oversubscribed by $ 50,000 and funds were invested to vaccinate new children moving into the Eastern Bay of Plenty (Helmbright, personal communication, 1990).

establishment of a research unit dedicated to the control of hepatitis B (Pomare 1985). Conclusions reached by Pomare (1985) included a more detailed and inclusive consultation with Maori by providers. Pomare also indicated there were limitations with the Hepatitis B Control Trust (ibid, p. 85).

Although Maori health concerns have changed over time, policies, and services have been shaped by the peculiarities of their social and economic environments. Early concerns in the EBOP were related to cost to the community and cultural competencies of providers (Pomare, 1985). Some Maori felt the decision was not theirs because the health of their children was in danger (Pomare, 1985, p. 37). As the programme continued, concerns were raised about the availability of vaccine for the babies of 'carrier' mothers and the use of the blood samples. In recent times the achievement of immunisation targets, access to services, and improvements in public health and primary care services for Maori have led to changes in health policy related to hepatitis B (Helmbright, personal communication 1990; Department of Health & Te Puni Kokiri 1993; Public Health Commission 1995).

DISCUSSION

The influence of hepatitis B on Maori health policy has produced a measure of convergence between Crown and Maori as Treaty partners. With the exception of Pomare, Maori have had few opportunities to comprehensively evaluate the needs of Maori in relation to hepatitis B. Lack of opportunity meant policy developed did not always have the support of Maori and therefore was divergent from Maori needs.

There has been some Maori development mixed with Maori advancement. The separation of advancement and development provides Maori with opportunity to participate in the needs assessment, policy development, planning, and the delivery of services. Maori were denied opportunities offered by advancement because policy design was external to Maori views. The model suggested by the Working Party (1996) did little to recognise Maori needs, and by and large, Maori were reacting to expert advice. With the exception of Pomare (1985) expert advice ignored fundamental issues of Maori health priorities and process arising from the solutions formulated by experts. Leadership by Maori appeared to be captured within a non-Maori solution and a predetermined approach to the control of hepatitis B infection. Evidence for the efficacy of the vaccination programmes is uneven. The general population has been well reported. Evaluation bypassed those most at risk. Those most at risk of chronic infection are the children ignored, very young children, mostly Mäori, exposed to the hepatitis B carrier -those for whom hepatitis control policy was proposed to protect.

Availability of skilled policy makers, health professionals, and organisation capacity continues to limit sustained development and advancement for Maori. A planned process for developing these processes requires a careful analysis of the whole health sector considering issues of Maori advancement and Maori development.

Whether more active roles for Maori and the application of Maori development and advancement improves Maori health status remains to be seen. This is especially important given the impact on health outcomes of policy addressing employment, housing, and taxation. In the case of hepatitis B, the issues are clearer. Few Maori organisations or Maori possessed the technical skill to undertake comprehensive monitoring of hepatitis B. The notion of Maori advancement advocates services developed with Maori principles driving them. Maori development would address issues that relate to cultural development to ensure the benefits are sustainable within a wide variety of Maori communities.

Contemporary health policies do not recognise the needs of Maori in terms of advancement and development, however where Maori *participate* in *partnership* with non-Maori stakeholders in the development of policy and services Maori benefit. In terms of health this may be a reduction in disparity or recognition of a need for different services. Whatever the process, the *protection* of Maori will be the result of well planned, well integrated, and sustained health interventions. The processes of partnership, participation, and protection are consistent with the Treaty principles identified by the Royal Commission on Social Policy.

The maturity of health policy for Maori has produced solutions to health issues consistent with Maori advancement. The progress of this trend in the last decade towards the application of Maori worldviews has been made with slow and uneven progress. In some cases leading to the devolution of service delivery to a few Maori organisations. Within Maori organisation this has led to Maori development.

Hepatitis B remains endemic amongst New Zealand Maori. There is evidence of risk of liver cancer poses to these people who are chronically infected –Mäori, Asian, and Pacific people have a much higher risk (Blakely et al 1999). Two fundamental quality issues for the delivery of hepatitis B related services remain unresolved. The efficacy of the neo-natal immunisation programme is unknown and low immunisation rates characterise the status of many Maori children.

Health policy has developed many initiatives consistent with the notion of Maori advancement for benefit of children. Rarely has this involved the Maori parent or the Maori child to whom the Government as an obligation under the terms of the UN Convention of the Rights of the Child. The transmission hepatitis B to the child, and the denial of the opportunity to exercise a choice was no doubt a denial of a right under this convention.
For a time in the past, Maori parents were denied a choice to protect their children from a disease. They were excluded from the delivery of an essential medicine that would prevent or delay many Maori children from becoming hepatitis B carriers. Perhaps it is time they had a voice.

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