Children, Families, Law and Social Policy in Aotearoa/New Zealand*

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Introduction

Aotearoa/New Zealand[1] has until recently received relatively little attention from social scientists. Those who have written about this small, remote South Pacific society have in the past looked to the United Kingdom, and more recently to the United States of America or even Australia, for ideas and data which have been assumed, relatively uncritically, to apply to this country (Swain, 1979). It is increasingly recognized now, at least in this country, that Aotearoa/New Zealand is different in some important respects from other predominantly English-speaking societies.

Some important elements of the culture of Aotearoa/New Zealand, as well as a major proportion of the population, derive from the United Kingdom, but this influence has in recent decades been modified by American and Australian influences. For example, our basic legal system and common law derive from the British tradition, but we have more recently looked to such jurisdictions as California and South Australia in reforming our family law. Most recently, and indicating current political and cultural changes, the Law Commission Act 1985 requires the Commission to "take into account te ao Maori (the Maori dimension) and... also give consideration to the multicultural character of New Zealand society" [s.5(2)(a)].

Key Social and Cultural Dimensions of Aotearoa/New Zealand

Our geographical location in the remote South Pacific at the southern corner of Polynesia, the vigor of te tangata whenua[2] who were well-established when the

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[1]The country has until recently been known exclusively by the name "New Zealand," attributed to it by Abel Tasman, a Dutch explorer who reached its shores in 1642. The Maori name "Aotearoa" (see Glossary) is increasingly used to acknowledge te tangata whenua, the Maori population who reached and settled in Aotearoa perhaps a thousand years before the first Europeans.

[2]See Glossary for Maori words and phrases. Maori words are not shown in italics as they are not foreign to Aotearoa/New Zealand (King, 1985).

pakeha colonists arrived, and the systematic nature of pakeha settlement, has perhaps meant that these two cultures were less unequal in subsequent conflict than has been the case elsewhere. Compared with other situations of European colonization, the pakeha occupation (lasting from the mid-19th century to the 1950s) was relatively organized and selective with relatively pronounced religious (especially Protestant) influences. These features have been associated with an emphasis on due process and hence legislation, disapproval of great economic differences, and approval of charitable and more recently welfare provisions. While conservative in some respects, Aotearoa/New Zealand could also be regarded as an innovative and even "radical" society in other English-speaking countries.

The uncrowded and relatively unpolluted environment, associated with relatively recent urbanization[3] and lack of traditional heavy industries, has led to a widespread belief that Aotearoa/New Zealand lacks serious social problems. While undoubtedly less obvious, there are significant social problems in Aotearoa/Nea Zealand. For example, the aphorism that "it's great place to bring up kids" conceals a number of problems of early childhood such as high early childhood mortality, child abuse and child sexual abuse.

Aotearoa/Nea Zealand has a small population (estimated at about 3.2 million in 1983 — Douglas, 1984:27) with a post-transition age-sex demographic structure. The fertility rate has been falling more or less steadily since the 1870s and reached 1.9 in 1984 (New Zealand Planning Council, 1985:16), although "average family size, as implied by... the total fertility rate... increased fractionally from 1.91 births per woman in 1984 to 1.95... in 1985" (Department of Statistics, 1985:1). Both levels are well below replacement level. Concern with the birth rate has had a long-standing influence on family and more general social policies. There are ethnic differences in the birth rate, but all rates are converging at below-replacement level. These demographic changes have substantial implications in a variety of areas, from the funding of national super-annuation for the elderly to the social provisions made for children, especially at the pre-school level where the lead-time for policy changes and provisions is necessarily short (Douglas, 1984).

This small population is increasingly multicultural[4] comprising particularly the Maori tangata whenua, the pakeha (mainly British) majority, and the more recent

[3]There have been three overlapping waves of urbanization in Aotearoa/New Zealand: pakeha — more or less complete by the 1926 census; Maori — more or less complete by the 1966 census; and Pacific Island Polynesian — current (from some Pacific island societies, rather than rural Aotearoa/New Zealand).

[4]"Official figures suggest that [there is] a 12-15 year lag...[between Maori and Pakeha fertility decline]...[and there is] at least 10%...under-registration of Maori births [i.e., of the infants as Maori]...Extrapolating observed trends into the near future suggests that by the end of this century only 50-55 percent of the children born will be 'pure Pakeha' [not as homogenously Anglo-Celtic as it used to be]. Maori and part-Maori will comprise about 30 percent of all births, Pacific Islanders will approximate 12 percent of all births, and [others] will constitute about 4 percent of births.

For early childhood education, the importance of our country's ethic diversity cannot be underrated...[and] the preschool environment will be the first real testing ground [of pluralistic or multicultural policies]" (Douglas, 1984:29).

Pacific Island Polynesian arrivals. While the record of contact between these cultures may stand favorable comparison with explicit near-genocide in other places, it has been characterized by a pakeha monoculturalism which has been unrelenting, largely unexamined[5], and largely unchallenged until recently.

This is now changing, perhaps more rapidly in early childhood education than many other sectors of society:

> Slowly, but very slowly, many New Zealand Pakeha people are accepting that we live in a racist society... (The) significant point is that the Pakeha group at important stages of our history, or for major events, has sufficient control or veto to determine that our expectations or aspirations will prevail if we feel it is necessary... It is our thesis that most Pakeha people lack knowledge and understanding of other cultures, and this ignorance, or even fear, has opened them up to actively participate in racism... Our contention is that habits and attitudes learned in these very early years provide the basis for general community attitudes and prejudices among Pakeha later in life... We are not one people. We are not the same. We are different. The 'we are one people' claim is usually made by colonists... (and) the 'one people' claim seeks to make light of minority cultures and the aspirations of other racial groups. Historically we are two peoples, one country. (Scott and Nairne, 1984:113-6)

The director of Maori and Pacific Island Education at the Department of Education has described progress "via bilingualism and biculturalism" towards "the goals of multiculturalism, multiracialism and multilingualism" as slow, but acknowledges that there has been some progress as "every one of eight hundred children from kohanga reo now in (primary) schools is being catered for in a bilingual programme" (Kaa, 1985:7).

Earlier policies of "assimilation" and "integration" may have been claimed or regarded as benevolent by earlier generations of pakeha in this country, but their effect can now be seen to have been destructive of Maoritanga. Social and family policies have been either formulated on the basis of pakeha values and attributes, or paternalistic in their application to other cultures.

Given its rural image, it may be surprising to learn that Aotearoa/New Zealand has a largely urban population and is one of the most highly-urbanized societies in the world. Urbanization was largely completed by the 1920s for the pakeha population and by the 1960s for the Maori population, while for the Pacific Island Polynesian population it is their current experience in the 1980s. Each culture has had to adapt to urban life, and patterns (e.g., fertility) have changed with urbanization. The Maori population is now, broadly, in its second urban generation, and is developing adaptations to the problems of urban life which are both innovative

[5]See Awatere (1984) for a challenging and controversial examination of pakeha racism and the concept of Maori sovereignty; see King (1985) for a sympathetic and contemporary pakeha experience of and response to the emergence of mana Maori and taha Maori in the 1980s.

and founded on their traditional culture, e.g., multitribal urban marae. The Pacific Island Polynesian population is encountering the immediate problems of urbanization, especially in our larger urban centres, notably our largest city (Tamakimakau-rau/Auckland). Such problems feature prominently in discussions of social policy and welfare matters, especially as they relate to children.

Our rural image overseas is no doubt based on the historical fact that our prosperity has for a century been founded on a highly-efficient export-oriented agricultural economy. As a result of major changes in traditional markets and dislocations to traditional patterns of trade, the economy is being transformed into an increasingly diverse and sophisticated agricultural-industrial complex based on forestry, horiculture and natural resources, with growth also in the manufacturing, tourism and high-technology sectors. The economic, social and political consequences of these major changes are now becoming apparent, e.g., unemployment among school-leavers, especially Maori and Pacific Island Polynesian young people.

The social welfare and social security system of Aotearoa/New Zealand is longstanding, comprehensive, relatively equitable, and sometimes innovative. While there is much political debate about the details, social welfare as a fundamental dimension of our society is more or less accepted by all political parties. Political debate about family or social policies is, curiously, sometimes unpredictable and frequently heated and often irrational. This is especially so in regard to sexual or related matters, such as human development and relationships education, contraception, abortion, and homosexuality. A prominent feature of recent debates regarding abortion and homosexuality has been the uncritical importation of irrelevant overseas viewpoints and experience.

The political dimension is worthy of note. Aotearoa/New Zealand was the first nation in the world to adopt universal suffrage, and there is an exceptionally high level of electoral participation and a relatively widespread interest in political activities and democratic political processes among a relatively well-educated and well-informed electorate. This means that political processes are frequently used in pursuit of desired social policies, legislation and changes. Parliament has been highly productive of legislation and regulations, and a good deal of Aotearoa/New Zealand's still fragmentary family policy is to be found in legislative instruments.

A key feature of, and emerging issue for, our society in the 1980s is our still largely monocultural economic, social and political structures, reflecting the dominant pakeha culture. There are, however, significant recent and forthcoming changes which may be seen as consistent with a movement towards a bicultural and eventually multicultural society. The bicultural emphasis means genuine equality for the culture of te tangata whenua, the Maori, as a precondition for a genuinely multicultural society (encompassing not only Pacific Island Polynesian cultures but other minorities as well). This has considerable relevance to families and children, as for example in the Tu Tangata programme of the Department of Maori Affairs.

This overview has been necessary in order to understand the background and foundations of contemporary family policy and family law. These features are

elaborated and drawn upon as appropriate in the following sections on family policy, legislation and selected substantive topics.

Family Policy in Aotearoa/New Zealand: Context, Challenge and Change

This section outlines: the lack of an explicit "family policy"; the unexamined assumptions upon which political debate and policy are based; some recent social changes which are highly relevant for family and social policy; key current challenges, especially from feminists and Maori activists; some recent government policy proposals; and the processes of consultation and policy-making.

It has recently been emphasized (Koopman-Boyden and Scott, 1984) that Aotearoa/New Zealand lacks an explicit and comprehensive "family policy" as such. Our society does not lack family-related policies, and a concern with family matters is long-standing. The concepts of aroha[6] and whanau are central in taha Maori, and have been so for centuries. These concepts have been reaffirmed in recent developments under the Tu Tangata programme umbrella. Thus whanau is a foundation of nga kohanga reo, for it is nga tuupuna who share te reo Maori and taha Maori with nga mokopuna at te kohanga reo. Whanau and aroha are also the basis of the Maatua Whangai programme, with its emphasis on what pakeha would probably call rehabilitation within the whanau and marae environments, and Maori might term "wholeness."

One of the first statutes passed after British occupation of Aotearoa/New Zealand began in the 1840s was an Ordinance for The Support of Destitute Families and Illegitimate Children (26 October 1846). There was severe dislocation of family life, with high levels of male desertion of their wives and children, and some form of relief was vital to prevent very severe poverty and homelessness. A variety of measures were passed in succeeding years, and while this article focuses on the present situation two are worth noting. In 1897 a Suppression of Juvenile Vice Bill was introduced into Parliament. This was intended to deal with "larrikins," young people who loitered on street corners smoking cigarettes and using "foul language." Thus the "problem" of "teenagers" was identified by some adults here long before the term itself was coined. Perhaps the problem requires reconceptualization. More recently, in 1926 a family allowance was introduced, its fundamental purpose being military or strategic — to raise the respectable white birth rate[7] and ensure that the Dominion of New Zealand could be defended against the non-white peoples to the north (Japan, China and Asia generally). These two items illustrate our long-standing pattern of ad hoc intervention in family matters.

Thus it can be argued that while Aotearoa/New Zealand has not had, and still largely lacks, a "family policy" in the explicit and comprehensive sense of the terms as used in some other societies, we have a long cultural and legislative history of

[6]In English "love" has to encompass a number of meanings (cf. the several national anthem refers to "love" as the social bond which holds society together (God of nations/At thy feet/In the bonds/Of love we meet"). This usage in the anthem is not dissimilar to the broad sense of aroha as caring or "love for the many" (King, 1985:192).

[7]This benefit was for white children who were third or subsequent nuptial births (Royal Commission on Social Security in New Zealand, 1972).

explicit attention to the importance of family matters. Overlaying this is a long-standing use of "family" as one of the magic political words for validating principles, policies or indeed politicians themselves. Cliches such as "the family is the cornerstone of our society" abound.

The major and largely unexamined assumptions upon which political debate and policy in the family area are based include: the family is the basic and fundamental social unit; "the family" is the conventional nuclear family (male breadwinner plus female caretaker plus dependent children); other family forms are "deviant", "at risk" or evidence of the breakdown of the family as defined above; the usual, desirable and "natural" adult female role is that of caretaker of home, husband and children; and children are the sole responsibility of their parents whose rights are paramount and whose family privacy is not lightly to be breached.

Each of these assumptions may be examined, and found to be a misleading and/or inadequate basis for social policy and practice. While families are undoubtedly one of the major social units of virtually all societies, there are others in Aotearoa/New Zealand and doubtless elsewhere. In terms of taha Maori whanau, hapu and iwi are all very important social units. For many Maori and pakeha, neighborhood and local community are important. This is more readily recognized in rural localities and small settlements, but it is also important in larger urban areas. "Neighborhood support networks", especially those oriented to crimeprevention, are now widely recognized and increasingly being implemented. While anonymous suburbs can readily be found, some of the austere housing developments of the 1950s and 1960s are now developing a real and vital sense of community, including those originally satellite to our major cities. Several studies of pakeha families (Koopman-Boyden, 1978; Society for Research on Women in New Zealand and Swain, 1978; Swain, 1978a; Denny and Nye, 1979; Rosemergy et al., 1984) have shown that extended family support is important both for younger families, especially at the transition to parenthood, and for the older generation, as their independence wanes.

"The family" defined in conventional nuclear terms has for some time now (Swain, 1978b; New Zealand Planning Council, 1985b) been only one among a number of household categories in Aotearoa/New Zealand. Another substantial group comprises the so-called dual career households, where both adults are in paid employment, and the wife-mother is also responsible for the bulk of the housework and child care (Social Development Council, 1977). The number of single-parent households is increasing, but they are less numerous than is generally believed (Social Development Council 1978), and typically in transition between the original two-adult household and a reconstituted household. Couple-only households are also numerous and increasing, and single-person households are the fastest-growing category (Social Development Council 1978). A variety of other household types, such as three-generational families, laterally extended families, and non-family households are also evident. All in all there is, and has long been, a diversity of household types in Aotearoa/New Zealand, and "the family" does not exist. Notwithstanding its non-existence, until quite recently a variety of social policies and services have been designed on the assumption that the conven-

tional nuclear family is the predominant family form. It is not.

Some recent social changes which are relevant for family and social policy include: (1) a continuing decline in the birthrate which is now below replacement level for the total population, i.e., 1.95 in 1985 (Department of Statistics, 1985); (2) birth rates for all ethnic groups are tending to converge, probably at below-replacement level; (3) there is a possible decline in the proportion of couples having children, although this may turn out to include a trend to delay starting families for several years after marriage (New Zealand Planning Council, 1985a) rather than a substantial increase in the voluntarily child-free; (4) there is a short- to medium-term prospect of an aging population, perhaps especially sharp for the Maori population; and (5) there is an increase in number of de facto marriages, which according to the 1981 census accounted for 4-5%[8] of the total population aged 16 and over (New Zealand Planning Council, 1985a).

The last item above illustrates the linkages among social and cultural changes. Among more recent cultural changes are: (1) growing recognition of the patriarchal nature of Aotearoa/New Zealand society, and particularly of the oppression (inter alia) of women; (2) changing ideas, especially among women, about women's rights, which is finding growing expresssion in policy and legislation, and most notably in the very recent establishment of a Ministry of Women's Affairs; (3) changing ideas, especially among women, about the role(s) of women in contemporary Aotearoa/New Zealand; and (4) growing acknowledgement of children's rights.

Key current challenges, especially from feminists and Maori activists include: (1) recognition that rape and child sexual abuse are not primaily sexual acts but forms of patriarchal social control and oppression of women and children; (2) recognition that these are men's problems, and that men must be centrally involved in their resolution; and (3) recognition that our society is monocultural and that achievement of a bicultural society will require real changes and concessions by the pakeha majority (Awatere, 1984; King, 1985).

Other challenges have come from a quite different direction and perspective, namely the various groups and organisations sometimes termed the "moral majority." This misnomer is presumably derived from the Moral Majority in the United States, but in Aotearoa/New Zealand support for "moral majority" views varies between perhaps 5% and 35% of the adult population, according to the topic canvassed, in opinion polls[9].

[8]By definition, and unlike de jure marriage, there should be an equal number of men and of women in de facto marriages. Overall 4% of the total usually resident population aged 16 or over are recorded as living in a de facto marriage; however, there were some discrepancies in reporting, and 5% of households had at least one adult who reported living in a de facto marriage (with more women than men reporting de facto marriage).

[9]An independent study of voter support for anti-Homosexual Law Reform Bill petitions in a marginal parliamentary constituency showed a significantly lower level of support than that claimed by the "moral majority" petition organizers.

These groups centre on the fundamentalist churches (with about 5% of the population as adherents according to the 1981 census). Members of this overseas-inspired religious-political movement have focussed their attention on a series of related social policy issues: homosexual law reform; abortion; human development and relationships education; child care[10]; and family and matrimonial legislation.

Perhpas the most significant contemporary development, with profound implications for the future of our society, is in the pre-school area and is focussed on institutionalized racism and the contemporary thrust towards biculturalism:

> The ultimate stage in Maori self-assertion was finally reached in 1982 when with the solid backing of (the Department of) Maori Affairs and the Maori Education Foundation, Te Kohanga Reo emerged to capture the interest and commitment of the total Maori community. At the 1983 Tu Tangata Hui Whakatauira ...the (then) Prime Minister said (that) Te Kohanga Reo is "a unique, imaginative and workable programme, ...a first for New Zealand (which)... in typical Maori style... avoids the institutionlization that we see too much... It is a place where the child itself is seen to be the most precious treasure a whanau can possess. With this... it is not hard to visualize young New Zealanders being bicultural and bilingual (which is)... certainly something I would want for my country." (Pewhairangi, 1984:104-5)

Some 800 children from nga kohanga reo have now entered primary school, and all have entered bilingual programmes (Kaa, 1985; Smith and Swain, in preparation).

The emergent sensitivity of pakeha researchers to institutionalized racism in social research, policy and practice raises some difficult issues. Ritchie and Ritchie (1984) have confronted this in respect of corporal punishment and child abuse:

> Our major conclusion... (in a review of) the Maori and Polynesian literature...on child abuse in different cultures around the world (Ritchie and Ritchie, 1981a)...was that, while physical punishment was freely used in every Pacific culture for which we have a reasonably accurate report, it was also strictly limited.... But the only national New Zealand study of child abuse (Fergusson, Fleming and O'Neill, 1972) revealed that physical abuse and

[10]Fundamentalists and feminists agree that childcare (day care) is a political issue, narrowly defined by fundamentalists in terms of government policy, but more broadly analyzed by feminists: "[I]t is my contention that, in contrast to what one could term the everyday practice of child care, any theoretical and political analysis of childcare involves a shift of emphasis from a focus on the child to that of women: to women as childbearers and childrearers, to women as the principal users of childcare, the main providers of childcare, and women as childcare workers...[T]he issues of childcare necessitate a reappraisal of the relationship between men and women...[M]any people do see childcare as a political issue (McDonald, 1978) but until one is conscious of childcare as existing in a wider network of relationships, it is usually experienced as non-political...I would however maintain that childcare is also political in a much broader sense: [1] It challenges the existent values that mothers should care for their own children for most of the time. [2] It potentially challenges the economic structure by enabling more women to be part of the workforce. [3] It potentially challenges the power relationships within the home, the community and the state by providing an alternative means of childrearing that society finds threatening" (Cook, 1984:22).

> maltreatment of children was occurring in Maori and Polynesian families to a considerable degree (though there may be reason to doubt the validity of the comparative rates reported in this study). It seemed clear to us in our earlier study of child rearing practices (Ritchie and Ritchie, 1970) that in certain New Zealand situations, Maoris and Polynesians did not have the community restraints that might apply in island or rural situations, and indeed (that) the stress and strain of living in depressed and isolated (urban) circumstances were reflected in the (child abuse) figures in that (Fergusson, Fleming and O'Neill, 1972) report....(Ritchie and Ritchie, 1984:108-9).

They offer a possible solution:

> The teaching and learning of respect is, we think, a deeply cultural matter for many important and quite central values and beliefs are involved. It is, therefore, a very serious step for us to take when we seem to be interfering in so central a part of the culture of others. Those who feel that this is never legitimate will doubtless reject all that we have said. But we would remind them that the culture they defend has not been static. Our reading of the record is that the degree and extent of the use of physical punishment which we now see is itself the result of changes that have occurred through contact with western economy, religion and ideology. Furthermore, if the superordinate value is aofa or aroha or aloha, then through it, we would suggest, respect or any other cultural message can be taught. We would not wish to take from parents their legitimate anger or their right and desire to control their children. We have called upon our own culture to change in the interests of the humanity of children and we feel entirely justified to call upon any or all other cultures to do the same. (Ritchie and Ritchie, 1984:110)

Some recent government policy proposals upon which controversy has centred include: (1) integration of child care with other early childhood care and education services under the Department of Education, with commensurate additional funding; (2) abolition of the statutory protection of corporal punishment by teachers (the Crimes Act, 1961); (3) extension of human development and relationships education to primary and intermediate schools; (4) rape law reform, defining an offence comprehensively, making it gender non-specific, abolishing spousal immunity, and affording a greater degree of protection to victims in matters of judicial procedure; and (5) homosexual law reform, decriminalizing adult male homosexual acts and making discrimination on grounds of sexual preference unlawful.

Under the present Government there have been some interesting changes in the opportunities for and processes of consultation and policy-making. A number of national hui on a variety of topics have been held at Parliament, and a variety of regional hui have involved many thousands of people. Other bodies from the Social Work Training Council to Parliamentary select committees have also canvassed public opinion in a variety of ways. Forthcoming public consultations range from a Royal Commission on Social Policy to the Defence Review Committee. Opinion surveys may be used as well as the more traditional method of calling for submissions which are then examined by the Royal Commission, Task Force or Committee. These are in addition to the regular processes such as traditional

pressure groups and petitions, calls for submissions to government departments, and various ad hoc statutory advisory bodies, e.g., the Social Advisory Council and the New Zealand Planning Council.

Opportunities for public input into policy-making have proliferated, and some effort has been made to make such opportunities more widely available than has previously been the case. Government departments now often provide clerical and secretarial services to facilitate the making of submissions, and the availability of official information has improved with the implementation of the Official Information Act 1982. This makes disclosure the norm, and the withholding of official information an exception requiring full Cabinet approval.

All of these changes make the process of policy review and policy-making rather more open than previously. While there have in earlier decades been a number of innovations in family law and social policy, Aotearoa/New Zealand is clearly now in a position to carry through further substantial reform and innovation – for which there are increasingly articulate, extensive and powerful calls.

Selected Topics: Normative, Exceptional and Non-Statutory

There are some topics centering on children, their rights and their welfare, which are largely encompassed by specific legislation. These will be outlined in the next two sections, with attention focussed on recent, innovative and/or significant legislation. This legislation is divided in the following two sections into two broad heuristic categories. The first group outlines the normative framework of family life. The second group deals with areas of stress such as poverty, marital breakdown and family violence. Some legislation currently before Parliament is included. Some more diffuse topics, and/or topics where legislative provision is inappropriate or only part of the approach used in Aotearoa/New Zealand, are covered in the following section.

It is important to acknowledge the variously-regarded Tiriti o Waitangi/Treaty of Waitangi of 1840, concluded between representatives of the British Crown and of a number of Maori tribes, as underlying much of Aotearoa/New Zealand's subsequent political and social history. This treaty is for many the basis of a bicultural society , concluded as it was between sovereign authorities, and some recent issues and changes in some social policy areas reflect this new attention to biculturalism. It is now a topic of some controversy.

It is also important to note a reservation about the conceptual framework implicit in the organization of these three sections. Distinctions are made between normative and exceptional situations, between children in need and children in trouble, and so forth. Such distinctions are arbitrary, and can be misleading. The normative can be defined in either statistical or prescriptive terms – and these may differ (it has been statistically but not prescriptively normative for women in Aotearoa/New Zealand to be pregnant or already to have had a child when they marry). Exceptional situations may, depending on their definition, be experienced by a statistical majority of the relevant population. Children who are in trouble are very likely to have been in need – the two are often intertwined in practice. These distinctions are made for heuristic purposes only, and should be examined with care.

The Normative Framework: Marriage, Reproduction and Parenthood

Marriage: The Marriage Act 1955 and amendments provide the statutory basis for family life. The legal requirements for marriage in Aotearoa/New Zealand are simple. Two person[11] simply agree, in a public ceremony in the presence of two witnesses and a marriage celebrant, to become spouses. Religious or other ceremonies such as signing of a cohabitation agreement may be built around this core; the ceremony may take place in a registry office, in a church, or in any other publically accessible place where a marriage celebrant is prepared to conduct the proceedings. It will be noted below that the provisions for terminating a marriage are somewhat more constrained, and focus sharply on the interests of any children of the family.

Sexuality: This broad topic is considered only insofar as policy and legislation have regard for the particular interests of children, and have not been covered elsewhere. Thus child sexual abuse is covered elsewhere in terms of incest, and rape has been covered in terms of current proposals for law reform. Homosexual law reform, as it effects children, is covered below.

The age of consent for heterosexual interaction[12] is 16, and there are special provisions for heterosexual interaction between young persons when the female is below 16 and the male is below 18. The legislation in respect of such matters as prostitution (which is itself not unlawful, although associated activities such as soliciting are), indecent publications, indecent exposure and the like generally makes no specific mention of children. The voluntary involvement of children in such activities would be covered by more welfare-oriented statutes, such as the Children and Young Persons Act, 1974, which provides for children in need of care, protection and/or control.

Decriminalization of male homosexual acts: The Homosexual Law Reform Bill 1985 (which is expected to be passed – perhaps in limited form – in 1986) has been the object of considerable controversy, some of which has been focussed on the question of the age of consent for homosexual interaction. The age of consent for heterosexual interaction is 16, and this is also the age provided in the Bill for homosexual interaction. Debate has centred on whether males[13] require protection against "homosexual seduction" to a greater age than females require protection against "heterosexual seduction." Research-based consideration of psychosexual development have not been widely considered in this debate, and there is some scope for doubting whether a general concern for the sexual abuse of children and young persons (which is predominantly by adult heterosexual males) is the predominant motivation for many critics of the Bill.

[11]It is not made explicit that they shall be of opposite sex, although the possibility that they could be of the same sex has not apparently been tested.

[12]Sexual intercourse is one form of sexual interaction, but others are also encompassed by the legislation.

[13]Homosexual interaction between females aged 16 and over has never been unlawful; this legislation is to legalize such interaction between males aged 16 and over.

Fertility: Human fertility is regulated in terms of the Contraception Sterilization and Abortion Act 1977, which was the result of a substantial Royal Commission of Inquiry and much public debate and controversy. The provisions for adult contraception and sterilization are fairly unexceptional: both are relatively freely available, the former either on prescription from a general practitioner, through family planning clinics or, in the case of some methods, through pharmacies and even supermarkets.

Some controversy surrounds legal provisions in respect of those under 16, who are prohibited from receiving instruction in or provision of any method of contraception except by or from an authorized person. For the provision of information to an individual young person, such persons include parents or guardians, doctors, approved family planning agency staff, social workers professionally concerned with the young person, and approved teachers. The provision of contraceptives is similarly restricted to parents or guardians, doctors, approved family planning agency staff, and registered pharmacists filling prescriptions.

Sex education: Group or class instruction about contraception has, until the recent change of government, been restricted to secondary schools (age 13 and upwards). A pilot scheme is now being conducted prior to the introduction shortly of human development and relationships education in the context of the health and social studies curricula in primary and intermediate schools.

The overt argument for this restriction, dating back to a public inquiry about 30 years ago into the sexual behavior of young people (Mazengarb, 1954) seems to have been that such restrictions will discourage younger persons from engaging in sexual intercourse. As a comprehensive recent report (Sceats, 1985) clearly shows, the effect is quite different. Young persons engage in unprotected sexual intercourse, and adolescent ex-nuptial conception and birth rates (even for those over sixteen) are a significant social problem. An alternative rationale, consistent with the introduction of human development and relationships education in primary and intermediate schools, is that such information should not simply be "sex education" but should be located in a broader context of ethical and social considerations, ideally forthcoming from those who have personal and continuing relationships with young people.

Abortion: This continues to be controversial, with much of the concern based on overseas experience. Abortion except to preserve the life of the mother was made unlawful in the Offences Against the Person Act 1877, and this provision continued until the Contraception Sterilization and Abortion Act 1977 and Crimes Amendment Act 1977. Briefly (see Sceats, 1985), abortion was made lawful if: (1) continuing the pregnancy would result in a serious mental or physical health risk for the woman (taking into account, but not solely based upon, the woman's age – near the beginning or end of the usual childbearing years – and grounds for believing the pregnancy is the result of rape); (2) substantial risk of serious handicap in the child; (3) pregnancy as a result of incest or like circumstances; or (4) severe subnormality of the pregnant woman.

The legislation included provisions for licensing institutions and doctors to certify

eligibility and perform abortions, for counselling of applicants, and for monitoring. The Abortion Supervisory Committee has recently published a comprehensive research report on induced abortion in New Zealand which shows that "levels of induced abortion in New Zealand are considerably lower than every other country with adequate data, except the Netherlands (residents)" (Sceats, 1985:32).

It is a matter of concern[14] that a quarter (26% in 1983) of abortions are to young women aged 15-19, who constitute one-fifth (21% at the 1981 census) of the female population:

> There are relatively high levels of fertility and abortion among women aged 19 years or less in New Zealand.... It is important...to distinguish between the very young – those under 16 years of age – whose proportional contribution to fertility and abortion is not great but is a matter of considerable medical and social concern, and those over 16 years who contribute the majority of births and abortions to women in the under-20 age group. The distinction between over and under 16 years is made because in New Zealand, persons under 16 years cannot marry and thus all births to mothers aged 15 years or less are, by definition, ex-nuptial. There are also restrictions in the availability of contraceptive information and services to persons under 16 years of age.... (Sceats, 1985:93)

Teenage fertility rates in Aotearao/New Zealand are high by appropriate international comparisons, but falling; abortion rates are similar to other comparable societies – outnumbering births roughly 2:1 – for the relatively highly fertile adolescents under 14 years, but are generally lower for older teenagers – about 1:4. Overall, a greater proportion of teenage conceptions in Aotearoa/New Zealand proceed to term than elsewhere. Sceats (1985:111) identifies "the reduction of teenage conceptions (and the attendant physical, social and emotional risks) to at least the level of most other developed nations" as a high priority.

This research report (Sceats, 1985) illustrates the importance of identifying significant differences between Aotearoa/New Zealand and other English-speaking societies (most particularly the United States of America), and yet a good deal of the adverse comment on the abortion situation in general in Aotearoa/New Zealand is based on irrelevant overseas (especially American) experience and problems.

Illegitimacy: Whether their birth is nuptial or ex-nuptial there is now, since the Status of Children Act 1969, no difference at all in law for the children concerned. The concept of illegitimacy has been abolished, and indeed ex-nuptial conception (sometimes "regularized" by the subsequent de jure marriage of the parents) has been statistically normative for Aotearoa/New Zealand for many years.

Adoption: This is covered by the Adoption Act 1955 and the Adult Adoption Information Act 1985. In legal terms, insofar as both guardianship and custody are

[14]Rates are also higher for Maori and Pacific Island Polynesian women, although those for the 15-19 age-group are comparable.

concerned, adoption is a complete break with the past. The available birth certificate does not show the birth parents, and once the process is complete the adoptive parents have the same rights and responsibilities as birth parents. The social practice, however, is changing. For a variety of reasons, the availability of children, especially babies, for adoption falls short of the demand for them, and a growing proportion of the falling number of adoptions are between a birth mother and adoptive parents who know her. Increasingly, the birth mother may have a continuing relationship with the adoptive family, especially as no veto on disclosure of birth information is possible with adoptions taking place from 1986 on.

Organizations such as Jigsaw have worked for some years to facilitate contact between birth mothers and their adopted children, and now the Adult Adoption Information Act 1985 makes official provision for enabling such contacts in respect of adoptions prior to 1986. Under the Act, from 1 September 1986, birth parents and adopted persons over 20 will be free to seek available information about each other. From 1 March 1986 birth parents and adopted persons over 20 may restrict access to information in respect of adoptions made prior to 1986 for ten years (renewable), or register a desire not to have personal contact. There is provision for counselling by social workers prior to disclosure.

Guardianship: This legal status is of some importance for children. It is defined by the Guardianship Act 1968 and the Guardianship Amendment Act 1981, with a further Guardianship Bill in prospect for 1986. In Aotearoa/New Zealand guardianship is "the right of control over the upbringing of a child," with "upbringing" defined to include "education and religion," the child's name, medical treatment, overseas travel and so forth (Guardianship Act 1968 s.2(1) and s.3). Guardianship can only be removed by a court, and only for a substantial reason connected with a child's welfare.

It should be noted that guardianship normally remains with both parents subsequent to the dissolution of a marriage. It is custody which is typically allocated to one parent while the other has access – although joint custody has begun to appear. Important provisions of the legislation include the first and paramount consideration of the welfare of the child in any judicial determination, the requirement that the child's wishes be ascertained and taken into account, provision for appointment of counsel for the child in any proceedings, and the irrelevance of a parent's sex in determining custody.

In 1985 the Wellington District Law Society set up a multidisciplinary group to review guardianship law (Pritchard, 1985), following the emergence of two major areas of concern. The Salvation Army in Aotearoa/New Zealand drew to public attention the situation of orphan children for whom testamentary guardians have not been appointed, who are thus left after the death of their parents with nobody known to them who has legal responsibility for their care. More generally, despite the counselling and mediation provisons of the Family Proceedings Act 1980 and Family Courts Act 1980 there are some continuing difficulties in relation to the custody of children following marital breakdown which it was thought might arise in part from "the emotional connotations associated with the word 'custody" (Pritchard, 1985:2).

The Law Society group noted that the emphasis in the Guardianship Act 1968 is on the rights of parents rather than children, and thus enlarged its brief (Pritchard, 1985) to include a review of all Aotearoa/New Zealand legislation which affects the rights of children in relation to their parents or guardians. This would include such legislation as the Adoption Act 1955 and the Children and Young Persons Act 1974. The group will also identify those needs which children have for parental responsibility and concern for which legislative provision could appropriately be made, but which are not met in current statutes. The Guardianship Bill currently in preparation should provide opportunities for submissions by the group to the appropriate Parliamentary select committee in due course.

The Committee for Children, established as a children's advocacy group for International Children's Year, recently called for a review of guardianship legislation to ensure that every child has a personal adult guardian. They reported:

> We specified those groups of children we believe to be particularly at risk: state wards in long term care, children of underage parents, and refugee children.... The Minister's reply clearly indicates that he views this as a matter of changing public attitudes, not passing more law.... We are hopeful...that the revised Children and Young Persons Act will make it much easier for long term foster parents to become guardians of state wards." (New Zealand Committee for Children, 1985d:9)

Human rights: There are some general statutes which may have relevance for children. These include the Human Rights Commission Act 1977, the Official Information Act 1982 and the proposed New Zealand Bill of Rights, currently under discussion. The first establishes some general human rights, more specifically in terms of non-discrimination on various grounds such as sex, race, ethnicity or religion. The Official Information Act 1982 includes provisions for the mandatory disclosure of "personal information" held by government departments and other statutory bodies to the person concerned, with obvious implications for groups such as children in the care of the Department of Social Welfare. The proposed Bill of Rights, currently under public discussion, might well reinforce such contemporary developments as the concept of children's rights, but this remains to be seen.

The Committee for Children's submission on the Bill of Rights:

> ...recommends that age be included among the grounds for the right to freedom from discrimination. While it would be important to ensure that children are not deprived of appropriate protection, we consider that the inclusion of age would help redress disadvantages suffered by children.... (New Zealand Committee for Children, 1985e:2)

They have also argued for the existence of "some effective body... to advocate for children and ensure that children's issues and children's affairs receive due consideration..." (New Zealand Committee for Children, 1985:2). The Committee itself is at present the only such widely-representative advocacy body.

The long-established parent education, support and advocacy body, the Federation of New Zealand Parents' Centres, resolved at their August 1985 Annual Conference "to urge Government to seriously consider the establishment by statute of the office of Ombudsperson for Children, to ensure that the needs and rights of children are protected. The...idea is for an advocate rather than an arbitrator...[as] the term 'ombudsperson'...[is] used in ...Scandanavia..." (New Zealand Committee for Children, 1985f:3). The comparison with Scandinavia is interesting here, as the Children's Ombudsperson established in Norway in 1981 has been cited as a precedent (New Zealand Committee for Children, 1985:4).

Exceptional Situations: Families and Children in Need and in Trouble

> The child shall enjoy special protection, and shall be given opportunities and facilities, by law and by other means, to enable him [sic] to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity. In the enactment of laws for this purpose the best interests of the child shall be the paramount consideration (United Nations, 1959:19-20).
>
> It is my opinion that New Zealand's present system of providing for the protection of abused and neglected children fails to accord our children the rights outlined in the Principle quoted above. (Tapp, 1984:140)

Children and young persons: The Children and Young Persons Act 1974 is currently under review. The Act defines "children" as aged 0-13 and "young persons" as aged 14-17. The Act relates both to children and young persons in need of care and protection and to those coming to notice for delinquent offending. It is administered by the Department of Social Welfare, and implemented through Children's Boards and Children and Young Persons Courts.

> The Children and Young Persons Act 1974 makes provision for preventive and social work services for children and young persons whose needs for care, protection or control are not being met and who are, or are at risk of becoming, deprived, neglected, disturbed, ill-treated or offenders against the law. The Act places a duty on the Department of Social Welfare to ensure the protection of children at risk and to lay complaints before a Children's Board and a Children and Young Persons Court. (Tapp and Wilson, 1982:87)

Children's Boards: These include representatives of the Police, Department of Social Welfare and Department of Maori Affairs, as well as a community representative, and the first two agencies must refer all cases involving children under any of the above criteria to the local Board, unless the child disputes an alleged offence. In such a case, referral is to the Children and Young Persons Court.

Children's Boards deal in a relatively informal way with juvenile offending. Department of Social Welfare social workers and Police youth aid officers may bring cases to these Boards. The child concerned and the parents are invited to attend a Board meeting, and "in a spirit of co-operation... explore various ways in which assistance in overcoming the difficulties may be obtained" (Department of Social Welfare, 1985a:41).

Most Children's Board referrals (82% in 1984-85) are of children aged 10-13, and cases are typically concluded with the child, parent or guardian "warned or counselled" by the Board (61%). If matters are in dispute, parents do not attend, or the Board decides that "more definite action needs to be taken" (Department of Social Welfare, 1985a:41), the case is referred to the Children and Young Persons Court.

Children and Young Persons Court: This has judicial jurisdiction over the same matters as Children's Boards, is presided over by an especially-appointed District Court judge, and holds hearings in private. There is also a similar Family Court which holds informal hearings on matrimonial matters, including guardianship, custody and access, adoption, paternity and the like. Counselling by approved agencies and mediation by the judge are processes extensively used by the Family Court. These procedures, together with provision for legal counsel to represent only the child, appointed by the Court to assist it and/or to represent the interests of the child, facilitate consideration of the child's perspectives and perceptions of their interests in Court decisions (Guardianship Act 1968, s. 30).

Of all cases considered by the Children and Young Persons Court in 1984-85 (Department of Social Welfare, 1985a), the bulk were offences against property (58%) or other offences (26%), with a small proportion in need of care and protection[15] (15%). The most frequent results were that the child was placed under social work supervision (25%), admonished with additional penalty (24%), or discharged or admonished and discharged (18%).

Elias (1984) has outlined some concerns regarding the statutory basis and workings of this Court. These range from judicial subjectivity to the failure of the Court to audit the guardianship role of the Department of Social Welfare once the Court has vested guardianship of children in its Director-General. He has argued that the Court's two roles — in respect of children in need and in respect of offences by children — should be separated. He argues that the Court acts with inadequate sensitivity to cultural differences, and that judges of the Court may lack adequate experience of the realities of family life. He deplores the situations which may arise in which children's civil rights are not protected[16] Tapp (1984-140) has addressed these issues:

> In an attempt to ensure that abused and neglected children are entitled to safe, secure homes the National Advisory Committee on the Prevention of Child Abuse asked me to draft some amendments to the Children and Young Persons Act 1974. In this paper I would like to outline...the proposals and principles upon which they are based. The amendments embody the following principles:
>
> (1) that prevention and early intervention are less intrusive and more likely to be successful than intervention which occurs only after the child has been seriously harmed; (2) that evaluation of and management decisions concerning child abuse and neglect can be made most effectively by the combined efforts of specialists from a number of disciplines; (3) that the responsibility for decisions should not rest solely on one individaul or agency; (4) that the legal and professional obligations of all involved persons should be specifically defined; (5) that no consideration should be given to separating a natural parent and a child unless it has been proven that the child has been, or is likely to be, harmed; (6) that intervention should be time limited and carefully planned so that it is not more damaging than the situation from which it seeks to protect the child; (7) that recognition must be accorded to a child's sense of time and need to establish and maintain a stable relationship with at least one psychological parent; and (8) that efforts should be made to ensure that a child's cultural, ethnic and community identity is protected and advanced.
>
> The implementation of these principles is [to be] achieved by: (1) the establishment of Child [Abuse] Protection Teams; (2) requiring that any plan formulated for an individual child has (a) clearly identified goals, and (b) a time-table based on the child's sense of time and need for stable adult relationships; (3) making provision for the subjection of proposed plans to the authority of the court; and (4) replacing long-term foster placement by permanent guardianship thus allowing security for the child without cutting of all ties with the 'natural' home.
>
> It is proposed that matters pertaining to child protection be placed within the jurisdiction of the Family Court...[which is] the only court with the necessary reputation for, and experience in, family-related mediation and multidisciplinary co-operation.....

State wards: One of the powers of the Children and Young Persons Court is to make guardianship orders placing children in the care of the Director-General of the Department of Social Welfare. This may also be enacted by agreement between parents and the Director-General. Such guardianship lasts until the child reaches adulthood, although it may be concluded earlier, on application by the child or parents, by the Director-General or by the Court.

Planning for children in care: The number of state wards has been declining in recent years, due to shorter stays in care rather than falling numbers coming into care (Department of Social Welfare, 1985a:33). The actual day-to-day care of such state wards may be in one of a variety of types of foster homes, or Department of Social Welfare institutions. New procedures requiring planning for children in care have been instituted in recognition of such problems as foster care breakdown,

[15]The Children and Young Persons Act 1974 defines abuse and neglect (s. 27) as sitations wherein "development is being avoidably prevented or neglected," "is being or is likely to be neglected or ill-treated," "is left without making reasonable provision for ...supervision and care...for a time which is unreasonable" and/or "[is] suffering or likely to suffer from ill-treatment or from inadequate care."

[16]The Children and Young Persons Amendment Act 1983 was described by the Government as a further attempt to define the rights of children and young persons in care, and the disciplinary powers of staff. For reviews of current practice see the Johnson Report (Department of Social Welfare, 1982b) and the Human Rights Commission report (Human Rights Commission, 1982). For a departmental discussion see Department of Social Welfare (1982a), and for the new code of practice in residential institutions see Department of Social Welfare (1985c).

multiple placements, and unplanned drift into what turns out to be long-term Department of Social Welfare care. Such planning, which ideally involves wide consultation with the child, parents, whanau/kinsfolk, foster parents, social workers and others concerned with the child, is not yet available to all children in care but is a high Department of Social Welfare priority. Identification of children who have no reasonable chance of return to their birth parent and who are thus eligible for adoption is also seen as a priority.

Maatua Whangai: This programme is an innovative development. It "belongs to the Maori community" and "the Departments of Maori Affairs and Social Welfare apply their resources...in accordance with the decisions of the core management groups and the needs of each community" (Department of Social Welfare, 1985a:33). Maatua Whangai is described as "[having made] considerable advances in some areas, but [having] been slow to develop in others" (Department of Social Welfare, 1985a:33). Maatua Whangai was originally conceived as a Maori foster placement scheme, but

> ...many Maori communities have responded by developing the programme to meet more diverse needs. This has lead to some confusion at times, and to a questioning of the programme, but the Department is convinced that basically the programme acknowledges a very real problem which has existed for many years, and is a constructive attempt to find a positive solution. The Department appreciates the very significant contribution made by many people to the Maatua Whangai programme during the year [1984-85], both in terms of time and talents, and looks forward to the programme gaining strength and diversity. The importance of some funding assistance to facilitate the effectiveness of [Maori community] core managment groups is now being addressed. (Department of Social Welfare, 1985a:33-34)

There are two possible interpretations of the phrase "a very real problem which has existed for many years" above. One is the longstanding monocultural (pakeha) emphasis on "Maori problems" characterized as poor parenting, child abuse or neglect, juvenile delinquency, and so forth. A more recent and persuasive interpretation is that the "very real problem" is the Department of Social Welfare's, and our society's, monoculturalism and institutionalized racism (cf. Department of Social Welfare, 1985b). Maatua Whangai may be seen as addressing either problem depending on the definition of the interpreter.

It must also be noted that there is an important but largely-neglected pakeha parallel to the whanau and hapu: the social network of kinsfolk, neighbors and friends. It was a distinguished academic visitor to Aotearoa/New Zealand who posed the research question which is now uncovering the importance of this network:

> 'Who cares for the caregiver?' That question, posed by Urie Bronfenbrenner at the Second Early Childhood Convention in 1979, jolted many in the early childhood area into reconsidering their assumptions about the support offered to parents of young children in this country. It has been a 'given' of New Zealand society that this is a great country in which to rear young children,

> and any question such as Bronfenbrenner's would previously have been met with polite incomprehension or else a list of all the services, both government and voluntary, that are available for parents. Could it be that the provision of services was not all there was to caring for caregivers? And was it possible that many caregivers, even in this welfare state, did not experience support, either public or private, in their parenting...? (Rosemergy et al., 1984:110)

> [T]his is a report of work in progress...and I would like to share with you speculation on [one]...of the many themes to emerge. [It]...is the overwhelming impression we have of how efficiently most families use their 'network' of other family members, neighbors and friends to screen the services the community offers them before they make a choice. To worry, as many of the early childhood services do, about how better to reach those not touched by the assistance they offer, is unprofitable, unless the other side of the equation is considered too — what decides a caregiver to take up one service and reject another? It seems to us that in a large part the answer is 'what her valued network members think of it'.... It does not seem to be a choice made after consideration of the philosophy, style or accessibility of the service. Instead, any uncertainty about the choice is dealt with by consultation with the network; then, a set of attitudes develop to justify the choice made, and it is these attitudes which are mistakenly taken by the service as reasons for the choice in the first place.... (Rosemergy et al., 1984-112)

Social welfare and social security: This system has been created in several phases since the 1870s, the present comprehensive system being based on the Social Security Act 1964 (and Social Security Amendment Act 1980). In 1984-85[17] the Department of Social Welfare budget amounted to 11.5% of the gross domestic product (GDP), with benefits accounting for almost all of the Department's budget. The major benefit is national superannuation (7.2% of GDP), paid at 80% of the average ordinary-time after-tax wage (i.e., at $ 133.83 at 31 March 1985[17] While constituting only a small proportion of the Department of Social Welfare budger, some benefits based on responsibility for children have attracted disproportionate controversy. The family benefit, paid at a flat rate of $ 6.00 per child per week to the mothers[18] of all children under 16 (or 16-17) and still at school), was originally introduced about half a century ago to raise the birth rate among married pakeha women. It is now a universal benefit, and may be capitalized for purposes such as first home purchase.

The domestic purposes benefit (DPB) is paid to several categories of beneficiaries, including unsupported male and female solo parents over 16 years of age. The basic weekly rate (currently[17] $ 99.82) is increased according to the number of dependent children. Identification by the beneficiary of the liable parent

[17]Unless specified otherwise, all data on social welfare and security are as at 31 March 1985 and are obtained from Department of Social Welfare (1985a).

[18]This benefit is paid to the mother when there are two parents; where there is only one parent the major benefit received may be the domestic purposes benefit, described later.

(i.e., non-custodial parent) is required, and the Department of Social Welfare obtains reimbursement of about 40%.

The DPB and children: Within the broad general social objectives of a welfare state a major goal of social security in Aotearoa/New Zealand is protection of the interests of children. There is reliable evidence that the domestic purposes benefit is sufficient for an adequate standard of living where accommodation costs are reasonable, and good reason to believe that children in a variety of circumstances were at considerable risk prior to introduction of this benefit (Fergusson and Horwood, 1978). However, it is not without its critics, and it appears that some of the concern at the perceived breakdown of family life, and even some of the earlier stigmatization of ex-nuptial birth and of separation and divorce, find expression in criticism of recipients of the domestic purposes benefit. The average duration of a domestic purposes benefit is 3.3 years, which suggests that it is predominantly used to ease transitional situations rather than to provide long-term support. Reasons for discontinuing the domestic purposes benefit would include remarriage and entry into paid employment.

While marital breakdown, sickness[19] or unemployment produce a variety of family stresses, and economic stress is likely to be an element of this overall stress, the social welfare and security system does ensure that this is minimized, especially in comparison with some other English-speaking societies. There is a fairly high degree of political consensus on the main features of the system in Aotearoa/New Zealand, although the rhetoric varies somewhat. It was a conservative (National) government which introduced national superannuation, the largest single item in the public budget, but it was a social democratic (Labour) government which introduced the domestic purposes benefit and family care.

Family care is a new package introduced recently as part of the present Government's broader economic and social strategy, and is designed to provide support to younger families on low incomes. To be eligible, families must have at least one employed adult and one child eligible for the family benefit, and a family income below certain limits. Payment is to the family benefit recipient, typically the mother. Eligibility is reviewed every 28 weeks. There are a number of other benefits which may impinge on children, such as widow's benefit, and the major benefits such as sickness, invalid's and unemployment benefits are increased when dependent children are involved.

The family law package: The Family Proceedings Act 1980 and the Family Courts Act 1980, together with the Matrimonial Property Act 1976, now govern the dissolution of marriage and related matters, especially custody, access, and matrimonial property. The Domestic Protection Act 1982 (including Rules made under the Act) is also relevant, as it provides protection (including *ex parte* orders for non-molestation, non-violence, occupation and so forth) against violence and other unacceptable correlates of martial breakdown.

[19]Accidental injury is not included here, because there is universal earings-related compensation for accidents.

Dissolution: The last 20 or 30 years have seen steady progress in the reform of the law relating to marital breakdown. Earlier legislation, the Matrimonial Proceedings Act 1963, provided both for speedy divorce on the grounds of matrimonial offence or fault (e.g., adultery) and for the more time-consuming divorce on the grounds of a separation agreement of two years or having lived apart for four years. The Family Proceedings Act 1980 makes irreconcilable breakdown the only grounds for a dissolution, and two years living apart the only acceptable evidence for such breakdown. The underlying rationale is that when a marriage relationship has irreconcilably broken down the legal relationship should be ended with as much fairness as possible and as little bitterness, hostility, humiliation and distress as may be (Webb and Adams, 1981).

Counselling and mediation: The Act makes several provisions for counselling, on application by either spouse, on referral by lawyers consulted by either, or by Court referral, and for public payment of counselling costs. There is further provision for the judge to convene a mediation conference. When these processes have been exhausted, the Court can make appropriate orders. The whole tenor of the Act improves the chances of the separating spouses making appropriate and workable arrangements for such matters as matrimonial property[20] and — of paramount importance – children for whom they are responsible. A Family Court shall not make an order for the dissolution of a marriage until the judge is satisfied that suitable arrangements have been made for the children, unless there are rare and exceptional circumstances. The interests and wishes of the children are central in provisions for a social worker's report on the children and in the appointment of separate counsel specifically to represent the child.

It is the experience of councellors[21] concerned with the new proceedings for marital breakdown that while some reconciliations are achieved (perhaps around 15%), the major success of the new family law package is in facilitating less stressful dissolution of marriages which are no longer working. With counselling and mediation there is a greater likelihood of the parties to a marital breakdown making appropriate and workable arrangements in respect of their continuing responsibilities as parents, and a lesser likelihood that the process of dissolution will exacerbate the hurt and anger felt.

Some Selected Topics in Broader Scope

> New Zealand society has an ambivalent attitude towards children and families. On one hand society expresses concern for the welfare of children, while on the other we demand that society not interfere in the manner in which we choose to run our family. These two policies of 'protection of children' and 'family autonomy' are in a state of constant flux and tension. This tension is responsible for the lack of uniformity in the policies behind

[20]The Matrimonial Property Act 1976 does not make specific provision for counselling or mediation.

[21]The National Marriage Guidance Council (Inc.), a voluntary counselling agency accredited to the Department of Justice, provides, through a number of regional councils, a substantial proportion of the counselling services used by Family Courts. It is to the experience of these counsellors (the author is a counselling supervisor with the Waikato Marriage Guidance Council (Inc.)) that reference is made.

the laws relating to children.

> For instance, where parents ask for assistance, as in custody cases, the law does not see itself as invading family privacy, therefore its sole concern is the welfare of the child. However, in cases of child abuse and neglect and adoption the State is seen as intruding on the family's autonomy so the law is concerned with parental rights, the child's welfare being seen as subsidiary. (Tapp and Wilson, 1982:76)

Children's rights: The concept is a relatively new one in Aotearoa/New Zealand. A bibliograph of research, documentary writing and commentaries on Aotearoa/New Zealand families published a decade ago (Koopman-Boyden, 1975) did not include a section on children's rights; the update published seven years later (Koopman-Boyden, 1982) had a large list of various publications, many of which were inspired by the International Year of the Child in 1979.

Children's rights may be seen in more than one perspective. One is in terms of children's basic and developmental needs – from basic physiological needs to emotional, social and intellectual needs (Kelmer Pringle, 1974). A substantial proportion of these needs are generally regarded in Aotearoa/New Zealand as being met within the family or procreation in association with the provisions of the welfare state such as housing, social security, childcare and education.

Child health: The record of Aotearoa/New Zealand in this regard could be much improved in a number of respects. While perinatal mortality rates may stand international comparison, post-neonatal and early childhood rates reveal both that levels of mortality are higher than other small social welfare democracies *and* that the sources of mortality are "lifestyle factors" (New Zealand Planning Council, 1985a) which in a proportion of cases are likely to be avoidable – accidents, respiratory disorders, gastroenteritis and sudden infant death (Tonkin, 1984). There are a variety of reasons for this poor early childhood health record. While there is subsidized general medical practitioner care and free hospital care, and specific health care services for pre-school children (notably the unique Plunket Nurse system), there are also problems which reduce the effectiveness of early childhood health care. Due to geographic constraints, some of our scattered population do not enjoy easy access to health care. Some categories of families (e.g., those in inner-city areas, those of lower socio-economic status and some ethnic groups) do not use services which are nominally available (Briggs and Allan, 1983). Perhaps even the general view that this is a good place to bring up children may mean that early indications of ill-health are not taken sufficiently seriously.

Emotional, social and intellectual development: A hui held in late 1985 at Parliament and chaired by the Minister of Education appears to have endorsed some major changes in relevant early childhood provisions in Aotearoa/New Zealand. The vigorous and community-level development of nga kohanga reo and the shift in administrative responsibility for childcare (day care) from the Department of Social Welfare to the Department of Education may together substantially improve the situation of young children in Aotearoa/New Zealand.

Another perspective is more political. It involves human and civil rights, such as the rights of children and young persons in judical proceedings or in state care, or in situations of marital breakdown. These rights are somewhat more controversial. The Department of Social Welfare, with its major responsibility for children in care, has been much criticized by community and client groups in recent years, and has made some efforts to recognize children's rights and to implement changes. While criticism has not ceased, there is some recognition of changes in the direction of improved rights for children in care, including support by the Department of Social Welfare for their efforts to negotiate with the Department. It remains to be seen whether children in Department of Social Welfare institutions, especially secure establishments, achieve full civil rights. The different ethnic profiles of staff, predominantly pakeha, and inmates, predominantly Maori and Pacific Island Polynesian, in such secure institutions for children and young people underlines the macrosocial dimension of institutionalized racism as well as the civil rights issue (Department of Social Welfare, 1985b).

The area of family violence is critical in understanding the situation of children in Aotearoa/New Zealand and underlines the importance of the macrosocial dimensions of patriarchy and sexism (Social Development Council, 1980). Women and children experience considerable violence in the family context in Aotearoa/New Zealand, as in many other societies. This includes a degree of child abuse and child sexual abuse only recently acknowledged (New Zealand Child Abuse Prevention Society Inc., 1985). Multidisciplinary child protection teams have been set up in a number of areas under the auspices of the Department of Social Welfare, to consider cases coming to notice and to determine the coordination of intervention and support for the families concerned. There are in addition "Parentline," a telephone counselling service, domiciliary assistance programmes for families under stress, and related resources such as family day care schemes which can offer supportive placement of children.

The National Advisory Committee on the Prevention of Child Abuse has issued guidelines for a multidisciplinary approach to child abuse prevention and intervention, and the national Child Abuse Prevention Society (Inc.) now brings together in conferences and training opportunities the wide range of agencies concerned with this problem.

The problem of child sexual abuse illustrates some of the changes in perspective which are occurring. The problem is only now being recognized, and the predominant responsibility of heterosexual males is beginning to be discussed. The Police schools programme has shifted from a "stranger danger" theme to "Keeping Ourselves Safe" (see New Zealand Committee for Children, 1985c:11). The school kit, being prepared by the Police and Department of Education, deals with age-appropriate behavioral skills for coping with physical and sexual abuse situations as an element of living skills. The emphasis is on the child's right and ability to determine what is inappropriate adult behavior, the child's right to have her wishes and feelings heard and respected, and the actions and resources available to children who are sexually abused. Community groups have developed more appropriate and explicit campaigns, such as the "knicker sticker" campaign with the theme

"Don't let an adult put his hands down your pants"[22]

Controversy still continues on the subject of corporal punishment. Despite the evidence from societies such as Scotland and Sweden, where corporal punishment has been abolished either in schools (Scotland) or completely (Sweden), there continues to be some resistance to its abolition in Aotearoa/New Zealand. The present Minister of Education has stated that the Crimes Act 1961 will be amended to make corporal punishment in schools unlawful. Notwithstanding the evidence that physical punishment is as counter-productive as it is extensive in Aotearoa/New Zealand (Ritchie and Ritchie, 1981b) it is unlikely that this prohibition will be extended to cover the home situation in the near future. It may be noted that this debate has been conducted more in terms of long-term outcomes than in terms of children's right.

The Human Rights Commission has recently released a public statement on *corporal punishment in schools:*

> [It] is...discussed in terms of... the Crimes Act 1961 and the Human Rights Commission Act 1977.... The Commission considers that corporal punishment in schools is (a) permitted under domestic law, (b) probably inconsistent with New Zealand's obligations under the United Nations Covenant on Civil and Political Rights, and (c) inconsistent with social progress in other areas. The Commission recognizes that any moves to abolish this form of discipline need, however, to be accompanied by measures to reassure all parents who want to retain corporal punishment in schools, that their sons and daughters will be educated in well ordered and disciplined schools.... The Commission supports current moves to remove corporal punishment from disciplinary measures legally available to New Zealand teachers. It also supports an appropriate amendment to section 59 of the Crimes Act. (Human Rights Commission, 1985:1)

The Committee for Children has noted that:

> [P]hysical punishment of school pupils...has been expressly permitted in New Zealand law since the 1877 Education Act. Section 59 of the Crimes Act 1961 states (1) Every parent or person in place of a parent, and every school master, is justified in using force by way of correction towards any child or pupil under his care, if the force used is reasonable under the circumstances. (2) The reasonableness of the force used is a question of fact.
>
> Education Board By-law 32, 1968...sub-section (d) states: Only in exceptional circumstances should girls be strapped, and in no case is corporal punishment to be inflicted on girls over 10 years of age. Sub-sections[s] 26 (b) and (d) of the Human Rights Commission Act 1977 require that male school students must not be treated in a 'less favorable' manner than female students. This provision is in conflict with the by-law, but does not override it....
>
> New Zealand domestic law authorizing corporal punishment may be inconsistent with our obligations under international human rights conventions. Article 7 of the United Nations Covenant on Civil and Political Rights states: 'No one shall be subjected to torture or to cruel, inhuman or degrading treatment or torture.' The United Nations Human Rights Committee considers that this article extends to corporal punishment as an educational or disciplinary measure — at least in those cases where it amounts to excessive chastisement. (New Zealand Committee for Children, 1985g: 6-7)

[22]The sticker message also urges children to tell somebody about it, and lists their mother, the Department of Social Welfare and the Police as possible people to tell.

It could perhaps be argued that the topics covered in the previous section, which are the subject of relatively clear legislative provision, are those for which something approximating consensus exists, although there may still be some continuing political debate and dissent. The topics discussed in the present section are best understood in terms of the power of adults over children, and of men over women, and are thus both more controversial and less coherent in policy and legislative terms.

Conclusions

Constraints of length have made it necessary to be selective in this treatment of issues, policies and legislation in respect of the rights and welfare of children in Aotearoa/New Zealand. Some key dimensions of the topic for Aotearoa/New Zealand have been outlined: a multicultural population in a monocultural society with bicultural aspirations, a perceived lack of serious social problems, rapid recent urbanization and economic change, a long-standing and extensive social welfare and social security system, and a high level of political involvement (in general elections, petitions and the like) by ordinary citizens.

The general family policy context — including the absence of an explicit and systematic family policy focus until recently, but a longstanding and pervasive public and political concern with family matters — has been briefly described, and substantive material has been presented in two sections. The first has focussed on those topics which are best understood in the context of the legislative framework — such as marriage, fertility regulation, parenthood, children's rights and marital breakdown. The second has encompassed more extensive and diffuse topics, such as child abuse. Some achievements and innovations in regard to the rights and welfare of children and families have been noted, as well as areas where further improvements are required — such as children in secure institutions, some aspects of guardianship, child health, and child abuse including child sexual abuse. Each of these topics has been set in the more pervasive context of sexism and racism, two of the major issues facing Aotearoa/New Zealand society.

Social research and social monitoring are relatively recent developments in Aotearoa/New Zealand, while social reform and social welfare are of long-standing importance. The application of the former to the latter over the next few years should be especially interesting. The most recent Early Childhood Convention in Aotearoa/New Zealand was symbolized by a stylized grove of mutually supportive kahikatea and the whakatauki "Kahikatea tu i te uru" so it is appropriate to conclude with the hope that we shall in the future be able to say,

Kei te kaha te tipu
On nga totara mokopuna me nga kauri mokopuna,
mo te ao hou.
They are growing strong and sturdy,
our totara and kauri grandchildren,
facing the challenges of the future[23].

GLOSSARY OF MAORI WORDS AND PHRASES

Brief explanations of the following words and phrases are provided for the assistance of overseas readers. As King (1985) has argued, most of these terms should be known to readers in Aotearoa/New Zealand.

Aotearoa: the Maori name for New Zealand, variously translated as "Long Bright Shining Land" or (more conventionally) "Land of the Long White Cloud."

Aroha: love; caring; "love for the many" (King, 1985:192). See footnote [5].

Hapu: sub-tribe.

Hui: gathering; assembly; meeting (hui whakatauira: leaders' and elders' conference).

Iwi: tribe.

Kahikatea: native trees which form groves, roots intertwine and give mutual support; alone they are vulnerable and fail to thrive. Hence te whakatuaki: "Kahikatea tu i te uru."

Kauri: highly-valued native tree which grows to a great age, often individually named when outstanding in age and size.

[Te] Kohanga Reo: government-backed grass-roots movement to establish "Maori language nests" (kohanga: nest; reo: language); Maori-language preschools or childcare (day care) centres. The formal programme is Te Kohanga Reo; the actual centres are nga kohanga reo (te is the singular article, nga is the plural article).

Maatua Whangai: another initiative under the Tu Tangata programme to develop "fostering" (in the broadest sense) of young Maori people at risk, the foster-families and the fostering being in terms of taha Maori, e.g., including placement according to tribe and marae experience; the broad sense of this term encompasses the conventional English sense of foster care.

Mana Maori: pride and confidence in taha Maori and in one's Maori identity.

Maori: "ordinary," "native," "people," used since the mid-19th century to describe te tangata whenua of Aotearoa/New Zealand.

[23]This is not exact translation, but is intended to convey in English a sense equivalent to that of the original whakatauki.

Maoritanga: see taha Maori.

Marae: the open ground in front of te whare puni (the carved meeting house of the tribe); the concept of the traditional gathering-place and meeting place for te iwi to conduct hui, tangihanga, etc.; the whole place.

Mokopuna: grandchildren; younger generation; descendants.

Pakeha: "European" or "white" are roughly equivalent but not synonymous terms — this word does not refer to a single ethnic group. The former term is more appropriately used to describe immigrants from Europe, and not all pakeha would be regarded as "white" elsewhere in the world. "Non-Maori" is the term often used in official documents. "Its accepted meaning today is simply 'non-Maori' — it is not a term of abuse" (King, 1985:195).

[Te] reo Maori: the Maori language, including the concepts embedded in it and by which the social world is constructed and interpreted (see also taha Maori).

Taha Maori: the Maori way; Maori culture; explanation and meaning [of the culture]; Maori dimensions of life; also termed Maoritanga.

Tangata whenua: "people of the land," hosts, the indigenous Maori population.

Tangihanga: ceremony of mourning — a most important rite de passage, conducted over several days at te marae.

Totara: highl-valued native tree which grows to a great age, often used for purposes of culturally-valued production by te tangata whenua.

Tu Tangata: "The Stand of the People" or "Stand Tall," a broad programme of Maori initiatives stimulated and/or supported by the Department of Maori Affairs, for fostering Maori identity and development from within the Maori community.

Tuupuna: grandparents; older generation; forebears; ancestors.

Whakatauki: saying, proverb, aphorism.

Whanau: the extended family — kinship and belonging.

NB: Phrases in which all words have initial capitalization are proper nouns, e.g., for government programmes. "Maori" is always capitalized; King (1985:195) suggests that "Pakeha... has as much right to be capped as Maori...and it looks foolish to render one in the upper case and the other in the lower." In this article, however, pakeha has not been given initial capitalization (unless it is so capped in an original quotation) because while the word Maori refers to a specific culture and ethnic group, pakeha is a generic term equivalent to "non-Maori."

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