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MARRIAGE : FIRST THE WORST
SECOND THE BEST?

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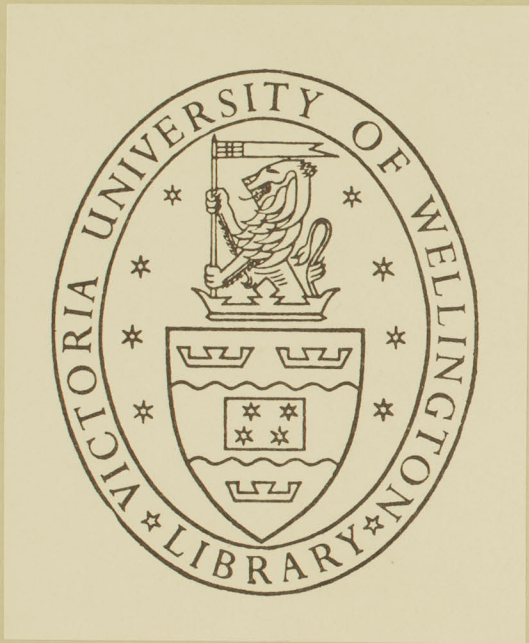
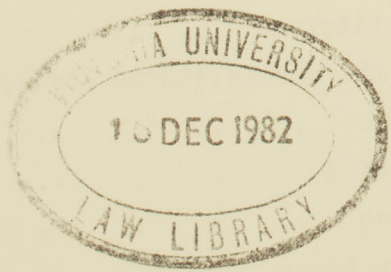


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INTRODUCTION

"You have to make a conscious effort, realise there are some problems and work them out so that you can become a REAL family."

This comment summarised the feelings of many respondents in a study¹ on the reconstituted family² - defined here widely as "any family in which at least one of the adults is a step-parent". There was a conscious and sincere effort to form families that were as similar as possible to what they considered "natural" families.

This paper is concerned with the following problems faced by the reconstituted family:

- (1) How do the members form themselves in a primary group³ so that they can live peacefully within their society and within their own home?
- (2) How does the law help or hinder this formation?

The termination of a marriage by either divorce (now "dissolution")⁴ or death will result in parties who are eligible to remarry but divorce is the larger supplier of people to the "remarriage market". Most marriages end by death but divorcees are more likely to remarry than widows⁵. This paper will therefore focus on the divorced who remarry, but reference will be made to the widowed where distinctions have to be drawn⁶.

There is a remarkable gap in New Zealand research into the reconstituted family and the problems that its members face so that overseas research - particularly US and UK - has provided the substance of the sociological input to this paper. In the light of the increasing incidence of this family in New Zealand society⁷, this vacuum is in need of urgent and comprehensive 'local' research. Remarriage is a growing phenomenon for which the participants are likely to be poorly prepared: the potential complexity of the remarriage institution is not a problem for the members of the reconstituted family, but society has not provided appropriate guidelines for the roles and relationships within this family.

Dissolution in New Zealand will be considered first with a view to providing an overview of the remarriage population. This will lead to a discussion of the problems that are faced by the partnerless and the ways in which the law and other factors affect the prospect and success of remarriage. From this will follow an analysis of the aspects of the reconstituted family that are essential to the integration of all of its members into one unit.

It should be noted at this stage that this paper is not intended to be a manual for success in the step-family situation. It is rather an attempt to analyse the social, psychological, emotional, financial, and legal situation of the reconstituted family in New Zealand.

OVERVIEW OF REMARRIAGE

The people who remarry do not constitute a random sample of the adult population. They have been strained through several 'sieves'. Firstly, they have been married once before they can remarry. They have been released from that marriage by dissolution or death and finally they have been selected into remarriage.

FIRST MARRIAGE

Since approximately nine out of every ten people who live to a marriageable age will ultimately marry, first marriage is a very coarse sieve. However, even this sieve represents a selective factor. Idiots, imbeciles and the incurably defective (including physically and intellectually handicapped people) tend to be among those who are selected out of marriage. In the case of women, it is the most educated, however slightly, that tend to be selected out of marriage and also the physically frail: for men, the least educated⁸.

Some studies have suggested that marriage may also select out of the married population, women with shy, withdrawn personalities who appear self-conscious and lacking in self-confidence⁹. This is especially significant in view of the increasing emphasis on the companionship marriage^{9a} where parties marry for the fulfilment of psychological needs, friendship, affection and sexual satisfaction.

Timing of bridal pregnancy, religious status, type of marriage ceremony and employment status of the wife, are relevant to divorce.

MORTALITY AS A SELECTIVE FACTOR

The death rate rises rapidly after age 40¹⁰. Therefore, there are few widowed in the lower age brackets. The rate is higher for men than women especially in middle age, resulting in a preponderance of women in the widowed population.

Certain occupational groups have higher mortality rates than others and these tend to be those with lower socio-economic status¹¹. But, whilst we can say that the widowed population has a disproportionate number of older women and people of lower socio-economic status, it does represent the entire range of occupation income and geographical location. Consequently, any generalisation can tell one only that its composition is somewhat distorted by the death rate in comparison with the marriage population.

DIVORCE AS A SELECTIVE FACTOR

As already noted, the divorce rate has been increasing over the last 30 years, but little has been written about the divorce-promoting characteristics of the parties. A study published in 1976, subjected all divorces and redivorces in Wellington and Lower Hutt in 1971 to analysis¹². The researcher's object was to test the correlation of a number of variables to divorce. The findings confirmed that variables such as socio-economic status, bridal age, timing of bridal pregnancy, religious status, type of marriage ceremony and employment status of the wife, are relevant to divorce.

Socio-economic mobility was the strongest correlate of divorce in the variables studied: persons changing to a lower status occupation after marriage were more likely to be divorced. The wife's employment status contributed to this correlation in that if the wife stopped working, the couple were more likely to experience a decline in socio-economic status¹³.

Using this technique of analysis, to determine the strength of correlation and the conditionality of the variables on other supressing or reinforcing variables the researcher was able to build up a profile of the once-divorced group members. People with the characteristics listed below are over-represented in the divorced population¹⁴:

- declining socio-economic status;
- registry office wedding;
- pre-marital pregnancy;
- an immature bride;
- non-working wife;
- disturbed natal-family background;
- overseas born;
- within-couple different birthplaces;
- dependent children;
- manual occupation;
- non-catholic;
- petitioner is the wife.

One can be certain of the selective significance of the above demographic variables, at least as far as they relate to the people in the greater Wellington area, but this certainty does not extend to personality qualities.

One can only speculate on the presence of neuroticism¹⁵ in divorcees. There is little doubt that there are many neurotic people within the divorced population along with those whose attitudes, values, likes, dislikes and preferences do not predispose them to a successful adjustment to the demands of marriage¹⁶: they are just not "the marrying kind".

This section can, therefore, be concluded by stating that the "remarrying" are selected from a predominantly "normal" population which probably contains a disproportionate number of neurotic people and people with a lack of marital aptitude.

SELECTIVE FORCES IN REMARRIAGE

The forces that help to select people out of the remarrying population into remarriage have been broken down by one American writer into three categories¹⁷:

(1) THE DESIRE TO REMARRY

There are compelling reasons for NOT wishing to remarry: If a first marriage has been unhappy, the divorced partner may fear a repetition; if it has been happy, there may be a fear that it could not be duplicated; the divorced spouse may enjoy the release from conventional restraints that termination of a marriage allows. However, most of these people appear to want to remarry¹⁸. The motives for remarriage have been categorised into the following classes¹⁹:

(a) Love

Love (including sex) in the middle and later years offers an opportunity to express emotions that may

have been suppressed in a first marriage. It may not only be reassuring but bring with it a certain euphoria because the partners may have just experienced a deprivation of love.

(b) Need for Companionship/Desire for Stability

The sense of loss of a companion may be unbearable. Some people find it difficult to carry the emotional burden of parenthood alone and find it necessary to have a partner who will play a complementary role so as to enable their own long-standing role as mother or father to be functional again.

(c) Need for Support

This motive may be sponsored by a genuine need for a partner with whom to make a home or the desire to find a "gold mine" - e.g. elderly people with property.

(d) Pressure from Friends/Family

Children of widowed or divorced mothers sometimes urge them to remarry.

(e) Status

People desirous of upward social mobility choose to remarry to achieve this goal. Research in America has revealed that women generally marry second husbands equal to or higher in status²⁰ than their first husband's at-marriage status²¹. This was true for women with or without children and regardless of the span between marriages. This general trend of upward social mobility indicates both:

(i) that women do not need to remarry - if they are faced with downward mobility they can choose singlehood.

(ii) divorced women are generally not stigmatized or disadvantaged when attempting to remarry.

Another commentator has stated that despite these external advantages of remarriage, the idea of "marriage" is implanted in the individual from childhood, so that there is within one a basic inclination towards it as the preferred state, regardless of the pros and cons²². Forces that shape one's personality impel one to prefer the married state.

(2) OPPORTUNITIES TO MEET PROSPECTIVE PARTNERS

There are no statistics available on how often future partners have courted each other before the dissolution of the first marriage. The indicators that exist, however, point to the fact that a large percentage of those divorcing have met their second spouse before the break-up of the first marriage is ratified by decree absolute. 49.3% of the divorces²³ of women that ended in 1980 lasted less than one year. The case for men is slightly stronger - 52% of the divorces that ended in the same period lasted less than a year²⁴. These figures are not conclusive because the parties could have met their future spouse during the period of separation and not necessarily during the marriage.

However common prior acquaintance may be though, there are many people who have not met their second spouse before the termination of their marriage. Occupational settings provide an opportunity to meet new people, but if because of age, infirmity or dependent children, the divorced or widowed are unable to find work outside the home, they will be at a disadvantage in finding a new spouse.

One of the recurrent problems facing the divorced and widowed is LONELINESS. An empty nuclear home is one of the loneliest places in the world. However, all individuals are enmeshed in a variety of external networks involving membership in voluntary organisations, ties to the neighbourhood and the workplace. These relationships need not be interrupted by dissolution or separation, but a movement away from the area or a change of job can compound the isolation within the home.

Likewise, segregated friendship networks (i.e. those in which only one partner was involved) need not be broken by dissolution. Where the divorcee can still participate in the shared activity that sustained the friendship, the relationship tends to be very stable. Joint friendship networks tend to be less durable, and if the husband has instigated the friendship (as was often the case in one English study²⁵), the wife is more exposed to the possibility of social neglect after dissolution²⁶.

In sum, geographical mobility after dissolution or separation, a lack of resources (including time and money²⁷) for social entertainment, and the discrimination of friends are some of the reasons for the divorcee's reduced social activity. For those who can maintain their social networks intact, there will obviously be a continuing opportunity to meet future spouses. For those who cannot, there is often a feeling of incompleteness because they feel that they have little in common with the majority. Their social isolation will select them out of the remarried population if they cannot overcome the following obstacles to finding a new partner.

- (i) Often networks cannot be rebuilt simply because of a lack of interactional skills: people feel a certain amount of self-consciousness at the prospect of going out to "create" friendships. This is often due to a stigma that is perceived by the divorced and the separated - the divorced man is a "wolf" - the divorced woman "fair game"²⁸.
- (ii) There is a lack of venues where unattached people can gather and an absence of avenues through which these people can contact each other. "Lonely Hearts" clubs, several of which exist in Wellington, provide a convenient rendezvous for the unattached but carry negative stereotypes with them. Personal columns in newspapers are an informal source of social contacts but little is known of the success rate of what many believe to be "frivolous

advertisements". Despite this paucity of venues, divorced men are more likely to marry divorced women than spinsters. This shows up only slightly in the 1980 figures. Whereas 46.6% of divorced men who remarried chose divorced women as brides, 46% chose spinsters²⁹. A sample of 1000 marriages in 1981³⁰, revealed that 47% of divorced men married divorced women whilst 47% married spinsters. Thus, the New Zealand statistics do not strongly support the initial generalisation. However, it is significant that almost half of the marriages of divorced men are to women in a similar social and legal situation. One can conclude that there must be effective channels operating to bring together such people despite the lack of general knowledge as to how they, in fact, function.

The above generalisation does apply to widows: widowers are more likely to marry widows. 48% of the widowers remarrying in 1980 took widows as brides. 33% took divorced women and the remainder chose spinsters³¹.

- (iii) Perhaps the most influential obstacle to remarriage after dissolution is a loss of self-confidence and a poor self-conception generated by a sense of inadequacy and failure at something most people make a success of. This applies especially to women whose husbands leave them for other women: "given the failure to hold even my spouse's

affections what is my chance of competing for another in the open market?"

There is statistical support for this proposition that men are more likely to remarry than women. In 1980, 16.23% of the men who married had divorced status, compared with 14.83% of women who married in that year³². This trend is marginally reversed for widowers and widows, probably because there is not the loss of self-confidence caused by the losing out to another women.

The sample of 1981 marriages confirmed the trend. Of the 1000 men who married, 17.4% were divorced at the time of the marriage, and of the 1000 women, 16.2% were divorcees. (The sample did not focus on the widowed except to the extent that they married divorcees.)

- (iv) An obvious obstacle to finding a partner is the unavailability of suitable partners. Much of the rising trend in remarriage is due to the changing age structure of the divorced population: just as the increase in numbers of people remarrying has been due to the growth of the divorced population, so the trend in remarriage rates has been strongly influenced by its younger age composition. There are differing rates for men and women - owing primarily to the differing age structures of divorced men and women available for remarriage³³.

The proportion who are younger (i.e. where remarriage rates are highest) is smaller for women than men. The population of unmarried divorced is younger for men than for women even though men are older at divorce, because women survive so much longer. At the older ages, therefore, there are many more of these women than men, with a consequent relative scarcity of suitable partners³⁴.

(3) ELIGIBILITY FOR REMARRIAGE

People must be desirable as well as desiring; choosable as well as choosing. In the young divorced, the qualities that make one attractive to prospective partners are likely to be very similar to those sought by the young never-married population.

An older woman who can attract a second husband is likely to be of above average personal appeal because she has more competition than a man of her age in her position. She will have to compete with attractive unmarried women of younger and middle age as well as with other divorced and widowed women eager to remarry. Eligible men of her own age are likely to be much sought after because, regardless of the biological logic, it is not customary for a woman to marry a man younger than herself³⁵.

Age is therefore an important variable in relation to eligibility for remarriage. Dealing with the individual ages first, it is an obvious fact that age at remarriage

varies with the status of the spouse. For example, in the sample of 1000 marriages in 1981, 30.5 was the average age of divorced women marrying bachelors, compared with an average age of 38.63 for those divorced women marrying divorced men and 43 for those marrying widowers.

Evidence to support the applicability of the above statements to the New Zealand situation is found when the ages of the remarrying spouses are looked at in combination. In 1981 over 90% of divorced males who married spinsters were older than their wives. In remarriages of two previously divorced people, the distribution was less skewed, with slightly less than one quarter (22%) of husbands marrying older wives. Not only was the husband older than the wife but more than forty per cent of divorced males who married spinsters were ten years or more older than their second wife. Thus the divorced woman is in competition with women much younger than herself in the marriage market. The man she is looking for is much sought after.

If a woman is to compete successfully she must be able to differentiate herself favourably from the other competitors. It appears from the statistics that a reasonably large percentage of divorced females are of above average appeal because 40% of those who remarried, chose bachelors and in 55% of those marriages the wife was older than her husband³⁶. One reason for

for this is that by the time many women remarry, there are relatively few older bachelors left. This rationale tends to downplay the fact that these women have still marketed themselves successfully to the "consumer" in the face of competition from younger and more attractive "products".

Unfortunately, time series data are not available to show the trend in the market share of divorced women. English figures for the years 1964 to 1976 suggest that divorced women are rapidly losing their market leadership position to the spinster (a longer-lasting model). From 1970 to 1976, divorced spouses were marrying single people to a greater extent than in the previous six years. For example, divorced men married spinsters more frequently in 1976 than in 1970, the figures being 13% in 1970 and 21% in 1976³⁷. This makes no allowance for the differing age compositions of the divorced: the older a person is at marriage, the more probable it is that their spouse will have been divorced. Fewer of the young in the UK marry a divorced spouse although more do than in the past. In 1964 only 3% of spinsters aged 20-24 married a divorced man compared with 9% in 1976. Similar proportionate increases amongst bachelors aged 20-24 were evidenced³⁸.

The competitive structure of the English market in relation to the product offering is very similar to that in New Zealand. As a result, a tentative conclusion can be drawn that whilst the "second hand" product has been outselling its competitor in the past, consumers are beginning to prefer the new version.

This is particularly true of the traditional second hand dealers who used to trade almost exclusively in the second hand product but who are now broadening their product base.

A market researcher would be hard pressed to explain the change in tastes, but one possible rationale is that whereas before the divorced man was seen as the "wolf" to be avoided at all costs, he is now regarded as being almost indistinguishable from his single counterpart.

There are, however, factors that reduce the marketability of the product, i.e. the divorced woman. Unlikely to be eligible for remarriage is the woman who has allowed herself to deteriorate physically or emotionally. Also, the presence of children may render a woman less eligible for remarriage. Unfortunately, questions such as the extent of remarriage of divorced people with young children and the structure of the new family after remarriage are beyond the scope of data available in New Zealand.

However, an increasing number of children are affected by the divorce of their parents, because not only are more couples divorcing, but more couples with children are seeking divorces. 77% of decrees absolute in 1971 were awarded to couples with children, in contrast to 68% in 1931³⁹. It is not clear whether this is because children are less affected by dissolution than marital discord and strife or whether the children are often a precipitating factor⁴⁰. It is clear though, that many divorced people will bring children with them to a remarriage. The implications of this will be discussed below. Suffice it to say at this stage, that several of the writer's female respondents had expressed

the view that men had been "put off" by the fact that they were getting a "package" - the male had not wanted to be an instant parent.

The older man - widowed or divorced - finds the market less competitive than a woman of the same age and marital status. The shortage of supply for the present demand means that divorced men remarry more than divorced women⁴¹. This creates a further deficit in the number of marriageable men. However, not all eligible men are desirable: the too elderly, the invalided, the "workaholic", the alcoholic, and the philanderer are not "husband material"⁴².

The factors relating to eligibility up until now have all been capable of at least modest support. More in the realm of speculation is the statement that Catholics are less likely to remarry than people of other religious denominations. The evidence for this proposition is the fact that Catholic Priests officiated at only 3.4% of all remarriages in 1980⁴³. This may be a result of the disapproval with which the Catholic church views remarriage but it may also be due to the remarriage of divorced Catholics outside their church.

At this stage, an attempt has been made to outline the characteristics of those who have been through the sieves described, and who have been selected for entry into the remarriage population. Whilst not every characteristic can be covered, the most common have been illustrated in an attempt to form several generalisations about the population under study. These will help to analyse the attempts that

have been made to adjust to remarriage and the aspects considered vital to complete family integration.

The analysis up until now has been a static one, but in looking at the problems in remarriage, one must have regard to the transition from the state of being married, to that of being divorced and then remarried. Dissolution is the process that transfers people from being married to being unmarried while remarriage takes people in the opposite direction. Dissolution of a marriage as a result of marital unhappiness and discord, involves a three step sequence of events that corresponds to the two processes⁴⁴.

- (i) The first is the decision to stop living together, i.e. SEPARATION. This is the actual breaking point of the marriage.
- (ii) The formal and legal break-up requires a second step - legal DISSOLUTION.
- (iii) The third event is, of course, REMARRIAGE. A second marriage can only be contracted after the first one has been officially terminated⁴⁵.

Unlike a first marriage, a remarriage, made up of one or two divorced people, who probably have at least one child from a previous marriage, begins with a set of legal encumbrances resulting from the dissolution. The next section will examine the way in which the law in New Zealand affects the parties during the three events listed above and the extent to which it contributes to both the stress of dissolution and the difficulty of organising and maintaining a step-family.

DISSOLUTION**MARITAL BREAKDOWN AND A HISTORY OF DIVORCE LEGISLATION**

While public opinion in New Zealand about marital breakdown in general and divorce in particular has never been empirically examined, it is believed that, the ordinary citizen has come to appreciate that marital unhappiness does not necessarily arise from the culpability of one partner. More probably, it stems from a complex of internal and external forces. As a consequence New Zealanders have increasingly come to the view that divorce is an acceptable and maybe even desirable form of relief when it is evident that a marriage has broken down irrevocably. The perpetuation of an unhappy marriage is widely seen as more harmful than divorce to all directly or indirectly concerned. Divorce is an acceptable remedy for marital disharmony and not necessarily an indicator of the instability of "marriage" or the degree of regard accorded to it⁴⁶.

However, New Zealanders have not always thought like this. Early divorce legislation reflected the general view that divorce should only be available in a very limited number of circumstances. The Matrimonial Proceedings Act, 1963, was a major revision of divorce legislation and made explicit society's new attitudes to marriage as outlined above. It provided for 24 separate grounds of divorce and recognised both matrimonial offences and *de facto* breakdown⁴⁷ (evidenced by separation for seven years) as reasons for permitting divorce.

An important departure from New Zealand's tradition of divorce law was marked in 1963 by recognition that divorce could be obtained by the spouse whose conduct appeared to contribute most to the breakdown of the marriage. Until then the "guilty" spouse had often been prohibited from obtaining the benefit of a divorce. This recognition gave priority to the *de facto* breakdown of a marriage over the issue of matrimonial guilt⁴⁸. Thus the 1963 Act can be regarded as marking the transition between emphases on fault and on *de facto* breakdown as grounds for divorce.

The 1968 Amendment to the Act continued the trend towards greater recognition of *de facto* breakdown. In many of the grounds for divorce⁴⁹, the waiting period was reduced from three to two years. Similarly, the justifying period for *de facto* breakdown was reduced from seven years to four. The principles guiding both Acts were:

- that it is contrary to the community's interest to insist on the perpetuation of a marriage that has broken down⁵⁰;
- that it is the state's responsibility to dissolve a marriage when the relationship is demonstrably unworkable;
- that the parties concerned are the best judge of whether or not their relationship is viable.

These Acts ensured that public policy approximated private behaviour and that the law served a minimal moral role. The culmination of the trend towards no fault divorce and towards the recognition of *de facto* breakdown was the 1980 Family Proceedings Act.

This Act saw the disappearance of "divorce" from New Zealand since the Act only referred to dissolution of marriage. The change of terms denoted the shift in emphasis from the spouses involved, to the marriage as a legal entity; from an emphasis on moral issues to legal issues. The principle effect of the Act was to replace the many matrimonial offences that could give rise to a divorce action with a single ground for the dissolution of marriage: the irreconcilable breakdown of marriage⁵¹. Once this was proved by showing that the parties had lived apart for two years immediately preceding the filing of the application for dissolution, the Court would grant an order for the dissolution of the marriage⁵².

Many submissions were received⁵³ and there was broad agreement amongst them that while any divorce was unfortunate, divorces should be facilitated in the sense that they should be as painless as possible for the spouses concerned.

The Minister of Justice argued that⁵⁴:

"In the complex web of the marital relationship, there is little point in attempting to apportion blame for the breakdown of the marriage. Indeed, often it will be impossible to do so. Fault harks back to past events, whereas it is important to avoid that kind of recrimination as far as possible, and to allow the parties to rebuild their lives in a constructive manner."

The Act represents a movement away from a preoccupation with the family history towards a greater concern for the family's future. The acrimony and bitterness, inherent in grounds of

fault for dissolution, are removed from matrimonial proceedings. Whilst not all disputes have been removed from proceedings, and the bitterness following break-up still remains, it was believed that the law had been so written as to enable parties to reconstruct their lives⁵⁵.

"The emphasis is on providing a framework for help."

The shift took place as legislators and the population at large became accustomed to the availability of divorce and its increased use. It must not be assumed, however, that this law change⁵⁶ has fostered an increase in divorce or that an increased divorce rate means that families are unstable or that marriage is held in low esteem. Quite the reverse is true. The notion of marriage being intrinsically good has changed towards placing a great deal of emphasis on values such as happiness/companionship and emotional support within marriage. People marrying today expect to receive and give friendship, affection, sexual satisfaction and fulfilment of psychological needs⁵⁷. When marriage can no longer fulfil these needs, many people are choosing to terminate the relationship and often, today, to seek them in another⁵⁸. The increasing remarriage rate suggests that for people dissatisfied with the first, marriage does not go out of style.

What the change in legislation has attempted to do is to remove the heat and antagonism from the proceedings, so that the trauma of marital break-up can be minimised. As stated earlier, the parties who deteriorate emotionally tend to be selected out of remarriage. The legislators had

stated that parties to a breakdown of marriage should be given every chance to establish a future for themselves; and so the way to do this was clearly then, to set-up proceedings that would minimise the emotional impact of divorce on the parties.

THE ROLE OF THE LAWYER

The lawyer is given an integral part to play in the framework for help provided by the Family Proceedings Act, 1980. In any issue involving separation, custody, access or guardianship between a husband and wife, the lawyer is under a duty to ensure that his client is aware of the facilities that exist for promoting (re)conciliation⁵⁹. If the lawyer feels that there are any further steps that could assist in promoting (re)conciliation, the law puts a duty on that lawyer to take them⁶⁰.

A similar duty had existed prior to this in s.13 of the Domestic Proceedings Act, 1968. The law at that stage still contained "fault" grounds so that at the end of the day, there was a "guilty" party and an "innocent aggrieved" party. This result turned the parties into adversaries and the lawyers in some cases exacerbated existing resentments and hostilities by vigorously seeking to protect the rights of their clients against the other spouse⁶¹.

This system was not conducive to the "friendly divorce" in which the parties' differences could be discussed relatively calmly, realistically and amicably. Rather, in the mid 1970s, the Wellington District Law Society was motivated, by a fear

of growing dissatisfaction in the community with lawyer's handling of domestic and matrimonial proceedings, to publish a memorandum on the expected conduct of lawyers under s.13 DPA⁶². It appeared that some lawyers were prepared to accept uncritically anything their client said and launch a "virtual crusade" against the client's spouse. This ruthless and uncompromising approach destroyed any possibility of the parties future co-operation, on any reasonable footing, on matters such as maintenance and access. Parties became embittered towards each other and the continuance of the first marriage into the post-divorce phase, via maintenance and access, was characterised by continual conflict and strain⁶³.

The legislative response to this situation was s.8 FPA but it appears, from discussion with lawyers that this section has not been as effective as intended in removing the "battleground" atmosphere from proceedings. However, it was enacted as PART of the framework for help for husband and wife. Thus even though the requirement of certification that the duty in s.8(1) FPA has been carried out, is largely ineffective in guaranteeing compliance with the duty, the overall "package" of provisions relating to the proceedings has led to a considerable improvement in the system vis-à-vis the parties to the proceedings. Lawyers believe that even though the situation in the office has not changed regarding the paramount nature of the client's interests, the situation in the courtroom has undergone dramatic change⁶⁴. No longer is there scope for a lawyer vs lawyer confrontation. There can be up to eight adults

at the hearing seated around a table discussing the case - including lawyers for both spouses and the child(ren), social workers, child psychologists and the judge.

The good lawyer in this context is the one who will try to reduce any conflict between the parties by getting them to agree wherever possible.

SUMMARY:

The FPA overall certainly represents a maturing approach to the dissolution of a marriage. Dissolution is treated as a social reality; not solely as a consequence of a person's rigidities and inability to adjust, but as a legitimate, moral, social event; a creative rather than a destructive act; an orderly instrument of change. It is treated as a responsible act carried out by responsible people.

The Act effectively relegates the hearing to a last resort course of action when all attempts at (re)conciliation have failed to generate consent inter partes. Courtroom procedure has ensured that the proceedings are not a destructively traumatic experience. Nevertheless, the outcome ensures that the first marriage will continue to influence any attempt to rebuild one's life. It must now be examined, how the substantive law relating to a dissolution affects a step family and fosters a successful break with the first marriage.

ASPECTS OF NEW ZEALAND'S DISSOLUTION LEGISLATION

INTRODUCTION

The shift from a fault-based system of dissolution to a no-fault system is, in theory, a shift from a morally based system of justice to a morally neutral system based on practical economic decisions. No-fault divorce laws shift the focus of the legal process from moral questions of fault and responsibility to economic issues of ability to pay and financial need. The law no longer rewards the "good" spouse and punishes the "bad" spouse. It seeks instead, a system of fairness and equitable distribution of resources based on the financial needs of each of the two parties and upon equality between the spouses⁶⁵. Thus, when the judges are awarding matrimonial property and spousal or child maintenance, they are making assumptions about how each of the parties and their children will (or should) fare in the future. Such decisions will obviously determine to a great extent the type of future that the parties are able to build for themselves.

In the following discussion it must be borne in mind that most divorcing couples are relatively young - 92.4% of women who were divorced in 1980 were under 30 years old as were 86.2% of all men divorcing in 1980⁶⁶ - and in the lower income groups⁶⁷. These couples are not likely to have major matrimonial or separate property, the amount of which increases both with marital duration, and family income. The implication of this is that the value of their matrimonial

property is likely to be low in relation to their wage and salary income, i.e. the spouses' earning capacity will probably be worth more than the tangible assets of the marriage⁶⁸. Having outlined these economic characteristics of the divorcing population, we will now examine the law to see the way in which it approaches the issue of the futures of the parties, their need or desire to remarry, and their ability to sustain a second marriage.

MATRIMONIAL PROPERTY LAW

Prior to 1976, the divorcing woman was in an inferior position vis-à-vis her husband in relation to the matrimonial property. The Matrimonial Property Acts 1963 and 1968 had made real advances towards an equitable deal for married women. Contributions such as, services and prudent management of the home could be taken into account in the Court order regarding the disposition of any property. Nevertheless, there were still serious defects⁶⁹:

- (i) the applicant (normally the wife) had to prove the contributions that had been made and have them quantified by the court if she was to receive anything (she was in truth seeking an award out of "his" property and not a share of "theirs").
- (ii) not only did she have to prove a contribution, but a contribution to the specific asset in question (often impossible to do in practice).

In 1976, a major reform of Matrimonial Property law was enacted. The Matrimonial Property Act 1976⁷⁰ provided a regime for

division of property on dissolution of a marriage. It represented a substantial improvement for the married woman who no longer wished to remain in a broken marriage, but did not affect the disposition of property on the death of one of the parties to the marriage.

The underlying basis of the Act is the belief that marriage is a partnership of equals⁷¹. The law, therefore, will look beyond the purely monetary input to a marriage made by spouses, to enquire into the division of labour between them.

OPERATION OF THE ACT

The Act makes a distinction between "matrimonial property"²⁷ and "separate property"⁷³ - the latter being considered the personal property of one of the spouses (i.e. not part of the common pool of assets and therefore not subject to the sharing rules in the Act). The family home and chattels will be matrimonial property whenever they were acquired⁷⁴, but as already mentioned, the combined value of these items will often be insubstantial. Other assets will be matrimonial property depending on who owns it, how it was acquired and when it was acquired.

Once it has been determined what property will come within the umbrella of matrimonial property, such property can be divided in accordance with the rules of the Act.

Before this can take place though, a further classification of the matrimonial property must be completed, into

- (A) The Matrimonial Home and Chattels, and
- (B) All the other Matrimonial Property.

Parties will generally receive an equal share in the Matrimonial property regardless of the classification. The distinction becomes important in relation to the rules that allow a departure from the equal division principle.

The Matrimonial Home and Chattels will not be divided equally if:

- (i) The Matrimonial Home is a homestead⁷⁵.
- (ii) The marriage has not lasted three years and the above assets were not acquired after the marriage by roughly equal contributions⁷⁶.
- (iii) There are extraordinary circumstances that render such a sharing repugnant to justice⁷⁷.

The only exception to the equal division rule for all the other matrimonial property arises where one party is able to show a clearly greater contribution to the marriage partnership. If this is established, the property will be divided on the basis of the contribution to the partnership and not to the asset in question⁷⁸.

Separate property is not totally outside the ambit of the Act. Under s.33, the Court has the power to make a range of orders that may require a spouse to have resort to his separate property, to enable the parties' shares to be effectively realised - for example by transferring title in his asset to her to buy out the ex-wife's interest in the matrimonial home.

In requiring an equal division, the Matrimonial Property Act treats marriage as an equal partnership. It makes a conclusive presumption that the overall financial and non-financial contributions of the spouses are of equal worth. Consequently, in the "normal" case, spouses will share equally in the matrimonial property on the breakdown of the marriage. Such a regime appears to be eminently fair and reasonable - parties are given equal capital resources with which to reconstruct their lives. There is a "clean break"⁷⁹ between the spouses in relation to the matrimonial property of their first or most recent marriage. They should therefore leave the marriage with an appropriate capital resource to form the basis of new housing investment.

One reservation with the scheme though, is its effect on the family home. The equal division rule requires a sale of the matrimonial home in families which have no other appreciable assets beyond the equity in their home - that is, a majority of divorcing couples. If the custodial parent has to change residence, the effects on the children can be severe. The effects of a change in the home environment are heightened because they occur simultaneously with the loss of one parent and a reduction in care from the other because of the need to work⁸⁰. The custodial parent cannot spend as much time with the children after the divorce as before. There is therefore an emotional impact of dissolution on the parties, consequent on its economic impact, if the house is to be sold.

If a sale is ordered, both parents must move out of the matrimonial home. Neither party will be able to stay on with a roof over their heads and possession of whatever durable

goods the parties had accumulated. Neither party will be likely to have enough capital to buy another house, and usually only the husband will earn sufficient income to afford mortgage repayments having used his capital to put a deposit on a house. For both parents in this situation, there will be significant discontinuity between the married and divorced states. However, researchers have shown that women are affected more substantially and permanently than are men by such severe economic changes⁸¹.

This phenomenon is applicable to the New Zealand environment but it occurs less frequently than, for example in the United States. In New Zealand, over half of the cases of marital breakdown result in one spouse remaining in the matrimonial home, at least in the short and medium term⁸². The large number of marriage breakdowns involving children is a contributing factor to this result. Custody and occupation of the matrimonial home are closely linked to the extent that the spouse with custody of young children will probably remain in the home. As wives are still more likely to be granted custody of young children, in practice, it is most frequently the wife who will remain in the matrimonial home⁸³.

Retention of the conjugal home offers a buffer against the worst material effects of marital breakdown. New Zealand law in practice, therefore, mitigates the economic impact of dissolution for many women and allows them a degree of continuity between the married and divorced states. There is also an associated dampening of the emotional impact of dissolution on these custodial parents and their children. These parents will still have less time to spend with their children than

before the dissolution but the significant others in the children's world such as friends, teachers, and relatives, will usually still be present to help the children to have as balanced a development as possible. Parents and children will generally, then, be given every chance of establishing the future of their choice whether that be remarriage or independence.

However, there are indications that the almost automatic long-term possession of the matrimonial home by the custodial parent may be weakening, as the courts more and more take the view that all matters relating to a marriage that has irretrievably broken down should be settled as soon as possible⁸⁴. Linked to this is the view that it is unfair for a spouse's half share of the equity in the matrimonial home to be tied up for a long period.

If the custodial parent in occupation of the matrimonial home is the wife, she will probably not be able to buy out the share of her departing ex-husband immediately. The methods she has available for buying out his share, such as refinancing existing mortgages, or reduced maintenance payments, involve long time periods. The husband's half share in such situations will often remain tied up in the home, for several years, thereby preventing him from treating this marriage as "dead". His non-access to his capital interest in the house will jeopardise any attempt to rebuild his life.

"Sale" of the matrimonial home (generally the only substantial asset of the couple) detrimentally affects the wife more than the husband, whereas "occupation" of the matrimonial home (generally by the wife) detrimentally affects the husband

more than the wife. The Courts must therefore perform a balancing act in determining the fate of the matrimonial property and in particular the matrimonial home.

SALE AND OCCUPATION ORDERS

The powers to sell⁸⁵ or grant exclusive occupation of the matrimonial home⁸⁶ are very wide. The discretion given to the Courts is not fettered by any statutory criteria.

Occupation orders are normally unnecessary because agreement can be reached between the parties on occupation of the matrimonial home. Most lawyers agree, however, that the occupation order is a necessary weapon of last resort⁸⁷. As stated earlier the occupation order is usually associated with a child custody order.

Application for a sale order under s.33(3)(a) MPA 1976 is not a common procedure but, like the occupation order, is a necessary provision.

The factors to be taken into account in the decision as to which order to make include the welfare of the children and financial considerations such as the ability of one partner to meet the outgoings on the house if he or she remains and their ability to buy the other partner out.

The matrimonial home is likely to be sold if⁸⁸:

- there are no dependent children;
- neither spouse can afford the outgoings alone;
- neither spouse can afford to buy the other out;
- sale would provide sufficient equity for two homes to be set up.

Of particular importance to this study is the tendency for sale to be ordered where one or both of the parties have entered a new marital relationship. Thus the following two factors are assuming increasing importance in the balancing exercise undertaken by the Court⁸⁹.

- (i) the desirability of bringing finality to a marriage dispute;
- (ii) the desirability of affording parties an opportunity to re-establish themselves by obtaining their shares of capital from the matrimonial home.

The inquiry will ultimately be: what is just and fair in the particular circumstances of the case. An illustrative case in relation to the exercise of the discretion when one of the parties has a second family to support is given in DOAK v TURNER⁹⁰.

The second marriage for both parties occurred in 1968 and lasted until 1973 when the parties separated, leaving the wife in occupation of the matrimonial home. During the marriage, the wife had made the initial cash contributions to the matrimonial home and provided money for its improvement and furnishings. The husband paid the mortgage instalments, the rates, the insurance and helped with the maintenance on the house. After the decree absolute in 1976, the husband applied for sale of the house and division of the proceeds.

Mahon J ordered that the shares of the parties should be one half each, that the property be sold and the net proceeds be divided equally between them. At the time of the order, the wife was very ill with hysterical weakness and palsy,

chest pains and depression. The economic conditions of the day, that is, inflation, had caused the value of house properties to rise so that her half share of the equity would have been insufficient to purchase another house if the matrimonial home had to be sold. Also, she was 55 and would have had difficulty securing employment to enable her to service any mortgage on a new house. She therefore appealed to the Court of Appeal.

The husband had remarried in 1976, and his third wife had provided the cash deposit for their new home. He then had to meet the outgoings on this house as well as that still occupied by his second wife. He sought sale of the latter property so that he could reduce the mortgage obligations on the former.

These circumstances suggest that a sale would be harsher on the wife than an occupation order would be on the husband. Yet the Court of Appeal was not prepared to accept this hardship as of primary importance. At the time of the appeal in 1981, the wife had occupied the house in question exclusively for eight years, and the Court was of the opinion that to deprive the husband and his 'new' wife of the opportunity to reduce their mortgage and establish their new life any longer would have been unfair⁹¹.

In ROUNTREE v ROUNTREE⁹², Roper J had to deal with the same issue, but in different circumstances. A "young" couple who had been married for nine years could not agree on the fate of the matrimonial property on the break-up of their marriage.

The wife (30) sought exclusive occupation of the matrimonial home, the husband (32) wanted his share in the home, untied.

Roper J. held that they were both at an age where it would be easier to establish a new and independent life than it would be in ten years time. The wife's de facto husband would be a source of financial help and the amount of money she would receive from the sale would enable her to re-establish herself. Roper J. correspondingly ordered sale of the matrimonial home and equal division of the proceeds.

The Court's approach to the disposition of matrimonial property is consistent with the considerations given priority in maintenance hearings - that is, the need for a "clean break" between the parties to the dissolution and the desirability of such parties becoming financially independent as soon as possible. The Courts are now favouring the severing of all ties with former spouses vis-à-vis the matrimonial property. This policy in theory, leaves the parties free to rebuild their lives and concentrate all their energy and resources on any remarriage into which they may enter. However, in practice, the matrimonial home will often be the only major item of matrimonial property. Also, the parties are likely to be young and still paying off mortgage debts on the home so that its nett value will be small. Both parties to the marriage break-up will therefore experience material deprivation and a decline in living standards, with the custodial parent and children probably the greater sufferers.

This situation could be remedied by the introduction of a legislative presumption in favour of maintaining the family

residence for minor children and their custodian⁹³.

This change should be accompanied by a widening of the asset base that constitutes matrimonial property to include "career assets", such as professional education, job security and enhanced earning capacity⁹⁴. The family in which the husband is the sole "breadwinner" typically devotes a great deal of time, energy, and money to building the husband's career. The wife will often sacrifice her own career to invest in the human capital of her wage-earning husband. Even in two income families, the spouses will probably have chosen to give priority to one spouse's career in the expectation that both will share in the benefits of that decision. A career that is developed in the course of a marriage is therefore just as much matrimonial property as the tangible assets.

The career assets will often be substantial so that if the wife is to continue to be the custodian and occupy the matrimonial home under the presumption above, she will be able to buy out the husband's share in the home with her share in the career assets. Presently, husbands are receiving a disproportionately large share of the matrimonial property. The above measures will help to restore the balance.

ONGOING INTERESTS IN PROPERTY

Where the matrimonial home is attached to a farm, special circumstances arise when the marriage breaks down and the property is to be divided. The farm is classified as a homestead for the purposes of the Matrimonial Property Act⁹⁵. The Act recognises that, in a farming situation, the homestead, defined as a family residence unsubdivided from

land used for business purposes, cannot be dealt with as if it were a separate entity. In the case of a homestead, the matrimonial property division is of a sum of money equal to the equity in the home, rather than of the house itself. The home functions not only as a residence but as a place at which the farm business is carried on and therefore will be of special significance to whichever spouse continues to operate the business after marriage breakdown. In this situation, a sale order would be inappropriate and it is unlikely that an occupation order will be granted.

As a general rule, the wife (that is, the non-operating spouse) will leave the matrimonial home. Cases of farm sales are few but not unknown⁹⁶. When a sale is not ordered, there are obviously going to be problems for the occupying spouse, regarding access to finance to pay out the departing spouse. Banks and stock and station agents are the likely sources.

Even though the Courts are unlikely to order a sale of the farm, they are concerned that departing spouses receive the share to which they are entitled as soon as possible after the judgement of the Court. In a recent case⁹⁷, the Court of Appeal overturned a High Court judgement concerning the paying off of a wife's share in the assets. The High Court had ordered that the wife's share (valued at about \$105,000) be paid out by \$30,000 cash within three months, \$20,000 within three years, and \$55,000 over the next 25 years. The Court of Appeal, however, ordered that she should not be kept out of her money and that the whole amount should be paid out to her within three years.

It is submitted that such a decision should be welcomed. It gives the farm manager (the husband) continuity in the operation of his business and it promotes a clean break between the parties in the soonest possible time, enabling the wife to settle quickly. She will usually be able to buy a house, because of the considerable amounts of money involved, and will therefore suffer very little material deprivation.

SUPERANNUATION AND PENSION SCHEMES

One of the categories of matrimonial property defined in the MPA is superannuation - the benefits, rights or pensions derived under superannuation schemes^{97a}. These schemes are significant because they are likely to be the only other major asset that a family owns besides the matrimonial home. They pose special problems for the courts if there is an attempt to allocate the full benefits of such items between both spouses. In many cases, the benefits are contingent on future events that may occur beyond the dates of separation or the court hearing. The difficulty lies in calculating a value that represents the true worth of the property^{97b}.

In deciding the cases that have been litigated so far, the courts have made reference to the policy behind the Act:

"It is not the purpose of the Act to fetter the future freedom of each of the parties to live his or her separate life. The exact opposite was intended by Parliament. Nor is it the purpose of the Act to discourage further endeavour nor even subsequent marriage ..."^{97c}

However, in trying to promote this "clean break" between the parties, the Courts have only taken into consideration the immediately realisable benefits under the schemes, namely

a refund of contributions, at the date of separation^{97d}.

The result of these cases has been that the wife has been unable to share in the substantial benefits which, to a significant extent, she helped earn. The husband has been able to buy out the wife's share at a small cost relative to the benefit of the scheme and continue as owner of it to reap the benefits of "his" and what should have been "their", future entitlement when it matured. "Clean break" is achieved, but at considerable cost to the wife.

The Court of Appeal has recently overruled the approach taken in the Supreme Court in the cases concerning the valuation of a superannuation scheme^{97e}. Cooke J said that valuation of an interest in such a scheme should still be at the date of separation but that if contingent benefits had been earned to a significant extent before separation, they should be brought into account even though the member spouse's retirement may be many years ahead.

The recognition of the non-member spouse's entitlement to some of the future benefits of the scheme is to be welcomed. The member still continues in possession of the rights to the benefits (that is, the Court will not force a realisation of the scheme in order to effect equal division) but the Court is now recognising the equal contribution of both spouses to the marriage partnership. If this results in a higher award of the matrimonial property to the non-member (probably the wife) than before and therefore postpones the "clean break" a little longer, it is a small price to pay for the added financial help to the wife during the period of dissolution.

MAINTENANCE

INTRODUCTION

In the light of comments made above concerning the probable lack of matrimonial property a divorcing couple will have, the maintenance award takes on the important role, in theory, of providing the main economic bridge between the married and divorced states, for the party in need.

One of the almost universal effects of marital breakdown is the material deprivation and the necessity of coming to terms with a level of consumption that yields a lower prestige rating in the wider society. There is thus, a stigma of poverty that attaches to many divorced people as well as the stigma of dissolution.

However, this is to look at maintenance solely from the payee's point of view. The payer's position, particularly in relation to any obligations to a second family, must be taken into account as well as the desirability of ending all contact between the parties and burying the marriage. With these considerations in mind, we can now turn to analyse the law of maintenance.

MAINTENANCE POLICY

Two policy objectives underly the maintenance rules enacted in the Family Proceedings Act, 1980.

1. *The first objective is to ease the transition by people from one family relationship to another*⁹⁸.

The law has had to recognise that the viability of a second family has a priority which often supercedes the interests of a first family given:

- (a) the rate of divorce and remarriage.
- (b) the impossibility for most people of supporting more than one family.

This recognition is embodied in the "clean break" principle as elucidated by Lord Scarman in MINTON v MINTON⁹⁹.

"The law now encourages spouses to avoid bitterness after family breakdown and to settle their money and property problems. An object of the modern law is to encourage each to put the past behind them and to begin a new life which is not overshadowed by the relationship that has broken down."

This principle can be applied to the situation where an application for maintenance is made long after all other matters concerning the breakup have been settled. Chilwell J, when faced with such an application in F v F¹⁰⁰ decided that it was against public policy to resurrect any relationship between the parties and refused to make an award of maintenance.

The "clean break" principle is not so applicable where there are children, over whom custody and access as well as maintenance must be decided. Their presence will necessitate some level of contact between the separated spouses.

2. *The second policy objective is that neither spouse should be financially dependent on the other for*

period more than a reasonable transition period after the breakdown¹⁰¹.

This objective was alluded to in the judgement of Richardson J in BUNCE v BUNCE¹⁰²:

"The social policies underlying the Matrimonial Property Act, the increasing recognition in all spheres of the equality of the spouses and the developing philosophy that the parties to a marriage which had broken down should go their own ways in so far as they reasonably can, free of continuing claims on one another, sit uneasily with any notion that, come what may, a woman, on marriage, obtains an entitlement to maintenance for life. It is a matter of determining what is reasonable for the parties in their particular circumstances."

Society is increasingly coming to expect that women will go out to work. Women can seek employment and will have less difficulty obtaining it today than previously¹⁰³. The implication of this trend for the maintenance payer is that the obligation towards a former spouse will terminate sooner.

To what extent have these objectives and expectations been incorporated into the recently enacted Maintenance law? If the policy objectives were included in the FPA 1980, one would expect the limitations on the liability to maintain to be increased.

THE LIABILITY TO MAINTAIN

There will be no entitlement to maintenance unless the inability to provide for one's own needs was caused by one of the factors set out in sections 63 and 64, FPA.

The causal factors set out in s.63(1) deal with the liability to maintain during the period of separation, that is, the

period prior to the legal dissolution of the marriage, and covers the following five factors:

- (i) The division of functions within the marriage while the parties were living together¹⁰⁴. Thus if one party chose or was obliged to forgo employment in order to care for a family and this was the cause of the present difficulties, then the other party would be liable to maintain that spouse.
- (ii) If the inability to meet one's needs stems from the fact of a custody order awarded in one's favour, this will be sufficient to attach liability to the non-custodial spouse¹⁰⁵.
- (iii) If one party undergoes a period of (re)training or education to increase their earning power or reduce their need for maintenance, and it is unfair to require that party to support himself or herself, liability to maintain that spouse will attach to the other spouse¹⁰⁶.
- (iv) If one party has a physical or mental disability, the other party will be liable for maintenance¹⁰⁷.
- (v) Unavailability of reasonable and adequate work will also attach the liability to maintain to the other spouse for the duration of the marriage¹⁰⁸.

The liability to maintain a divorced spouse, after the dissolution of the marriage arises only in cases (i) to (iii) above¹⁰⁹. These more limited grounds of liability in the "divorced period" can be justified on the ground that,

after dissolution, one only bears continuing responsibility for those difficulties that can be traced back to the marriage, whereas during the "separation period", one must take one's spouse as one finds him or her¹¹⁰. The appropriateness of "dissolution" as the point in time at which liability becomes more limited is beyond the scope of this paper, but the implication of such a system is clear for those who remarry and therefore have to support another family as well as the ex-spouse. Maintenance will be TRANSITORY, after the legal dissolution of the marriage. The obligation to pay will exist only while there are reasonable and marriage related needs that can be sourced back to the marriage. The remarried spouse who is liable to pay maintenance, will therefore not be required to maintain an economic relationship with the ex-spouse any longer than is reasonably necessary¹¹¹. This provision aims to encourage the party in need to rehabilitate quickly so that the liable party can shed the obligation to pay and reconstruct his or her own life.

Not only is the period of payment to be reasonable, but also the quantum of maintenance is limited so that no party is liable to pay an amount which would deprive that party or any dependant(s) of a *reasonable standard of living*¹¹².

The implication of this for those parties who have set up a second family is very significant. Perhaps the best way to illustrate the importance of the section is to describe briefly the previous approach by the Courts to the second family of a spouse who is liable to maintain an ex-spouse.

extent that he reasonably can, without imposing undue hardship on himself and his second family. The same principle applied to maintenance orders under the Matrimonial Proceedings Act, 1963.

Thirty years ago¹¹³, the Court's attitude was that after the break-up, the remarried husband's primary duty was to his first wife and that the obligation accruing from the second marriage must not be discharged or allowed to be in any substantial sense, at the expense of the first wife.

In 1972, the Court of Appeal in LINDSAY v LINDSAY¹¹⁴ adopted this statement of the policy of the current maintenance law and stated that it applied, regardless of whether either party to the divorce was guilty of a matrimonial offence.

In the same year, two weeks earlier, Richmond J.¹¹⁵, attempted to put the policy in Lyne's case into quantifiable terms. He held that a husband who has remarried is entitled to a reasonable level of subsistence and that his obligation to pay maintenance to his former wife does not extend beyond this limit.

In all these cases, the husband was under some legal obligation to support a second wife or a child. Does the law recognise an obligation on the husband if the dependant is a de facto spouse?

Chilwell J. felt it did in LETICA v LETICA¹¹⁶. He held that the Court should recognise the husband's stable de facto relationship as one which carries with it the responsibility to maintain his partner and her two children. As a result, the principle was applied, that a person who can afford to perform his statutory obligations under the Domestic Proceedings Act 1968 should be compelled to do so to the extent that he reasonably can, *without imposing undue hardship on himself and his second family*. The same principle applied to maintenance orders under the Matrimonial Proceedings Act, 1963.

The result of these cases was that the second family was lower in priority than the former spouse regarding entitlement to financial support. The second family was entitled to avoidance of undue hardship or in other words, a reasonable level of subsistence. This rule clearly had the potential to exacerbate any existing resentment by the husband and his dependents, of the ex-wife's claim which reduced their own standard of living to just above the "poverty line". Such animosity would obviously affect the relationship in the second marriage and could increase the difficulties in adjusting to the new relationship. Money problems can either strain a second marriage or bind the parties closer together. If there is a good rapport between the partners in the second marriage, financial difficulties may prove a bond rather than a source of strife - the partners may feel that they have to show the world that the game is worth the candle¹¹⁷. But regardless of the emotional impact such money problems could have on a second marriage, it must be borne in mind that the economic impact on these families was likely to be severe.

It is suggested that a new provision in the FPA introduces a limitation on the liability to maintain which places the second family in a far more favourable position (in terms of standard of living) than it previously enjoyed. The statutory phraseology introduces the test of "a reasonable standard of living" as the level at which the obligation of the payer to contribute to the support of a former spouse ceases. Maintenance orders may not be awarded by the Courts if they have the effect of reducing the payer's dependents

below that level¹¹⁸. This test differs from those that appear in the cases. At least one other writer believes that a reasonable standard of living entitles the potentially liable party to more than subsistence¹¹⁹. It obviously does not imply the standard of living that the parties were used to when they were living together. Indeed, in considering the amount of maintenance payable, the Court is prohibited from looking at the standard of living of the common household in determining the reasonable needs of each party¹²⁰. However, the new provision should be a sufficient improvement to ensure the removal of some of the stress from the new relationship. Financial problems are the second largest source of difficulties in remarriage¹²¹, so that this area of law reform is focusing on some of the key problems for the remarried parties.

Maintenance payments will always provide an on-going link with the former marriage which may be disruptive to a remarriage. The payments continue the earlier dependency without the affection. When the husband remarries, his new wife may have to work to help make support payments, possibly adding her resentment to that of the other parties to this new relationship. Many couples consider themselves fortunate if the second wife can work and make back what the husband has to pay out to the first wife. The wife nevertheless can still feel bitter that her family is living a life style only because she works¹²².

There are other psychological implications that flow from the maintenance obligation. If a man marries a woman with children there can be mental conflict between wanting to be

the financial head of the household and the true "dad" in every sense of the word. There can be resentment that life is dependent on another person paying child support to one's wife and anger at raising someone else's children - the paid baby-sitter syndrome. Even if the step-father has a good relationship with his wife's children it is not uncommon for him to have ego or emotional problems concerning who is paying for what. As much as women's liberation has advanced over recent years, most men still feel that they should be the head of the household, and the bigger breadwinner. Inability to pay for the additional expenses incurred by a house full of step-children can be a serious threat to a man's ego¹²³.

While maintenance law (indeed, any law) cannot deal directly with the emotional and psychological effects associated with the obligation to pay maintenance or with being married to a spouse who is receiving maintenance, it does deal indirectly with such effects. By ensuring that the liability to maintain an ex-spouse in the divorced state is transitory, marriage-related and possibly rehabilitative, the law has minimised the scope for resentment and bitterness to pervade any second family that the payer may have subsequently formed. The second family is entitled to a reasonable standard of living so that in determining the amount of maintenance payable, the Court must take into account that the payer is supporting another person(s)¹²⁴. The inability to pay for a house full of stepchildren, is, therefore, unlikely to be due to an excessive maintenance award in favour of an ex-spouse.

Up until now, the situation dealt with has only been concerned with the party claiming maintenance having some means of self-

support. Is the position of the maintenance payer adversely affected if the party claiming maintenance has instead, resorted to state assistance in the form of a benefit?

THE LIABLE PARENT CONTRIBUTION SCHEME

If the benefit is assured income that does not abate with other income, it will be a relevant consideration in the calculation of the quantum of maintenance. Therefore, receipt of National Superannuation or Accident Compensation will probably mean that one's reasonable needs can be met, and will be taken into account in the calculation. If the benefit is means tested, for example, the invalid's benefit or the sickness benefit, it will not be assured income and therefore will not be taken into consideration by a Court looking at the claimant's means of support.

It is clear that payment of a benefit by the State does not necessarily absolve a party from responsibility to pay maintenance under the FPA¹²⁵. Indeed, the Court of Appeal in ROPIHA v ROPIHA¹²⁶, held that people should not be able to pass their personal responsibilities onto the state. The Court ignored the receipt of an unemployment benefit when considering the party's means of support.

If the beneficiary is a solo parent, the benefit most likely to be received is the Domestic Purposes Benefit (DPB). If the beneficiary has custody or control of a dependent child and inter alia can identify in law the other parent of that child, then the Liable Parent Contribution Scheme will come into effect¹²⁷. The scheme turns the question of maintenance

into an administrative decision based not on the principle of "clean break" or "financial independence" but rather on the view that there should be an ongoing responsibility by the spouse who does not have custody of the children of the family. The liable parent must pay to the state, a contribution towards the benefit paid to the solo parent, while that parent receives the DPB. The assessment of the contribution by the Social Security Commission must be made in accordance with the twentieth schedule of the Social Security Act, 1964.

The schedule specifies four methods of calculating the contribution, the least amount of which will be the contribution that the "liable parent" must pay. One of these methods involves deducting certain specified expenses from the liable parent's weekly income¹²⁸. This is the method of calculation that will most often result in the lowest amount of contribution if the liable parent has to support a second family¹²⁹. As would be hoped in such a situation, expenses for dependants of the liable parent are taken into consideration and constitute allowable deductions. This recognition of commitments to a second family will result in a more realistic assessment by the Commission of what that parent can afford to pay. In practice, however, unless the liable parent earns well over the average wage, the presence of a dependent spouse and stepchildren will ensure that the contribution is assessed at nil. If, as has been postulated, most of those remarrying are in the lower socio-economic category, the LPCS will very seldom put the liable remarried parent in a worse position than if he or she had a full court maintenance hearing.

It is important to note at this stage that the LPCS only SUSPENDS the maintenance obligations of the liable parent, while the other parent receives the DPB. There has been no attempt to reconcile the principles of "clean break" with the scheme - an unavoidable result perhaps, given that the Scheme only comes into operation when there are dependent children present. Nevertheless, the aim of the Social Welfare Department (a department which appears to have no special brief, either to assist people to come to terms with marriage breakdown; or to protect the interests of the parties concerned)¹³⁰ in developing this Scheme was primarily financial. Increasing the contributions collected as a percentage of the total DPB payout was expressed to be the fundamental raison d'être of the LPCS¹³¹. This aim does not sit easily with the aim of private maintenance law where the interests of individuals in adjusting to their new circumstances are paramount.

Summary of the LPCS:

At a theoretical and policy level the scheme appears to threaten the viability of a second family. There is a potential "hangover" of the first marriage long into the second. Also the amount of the contribution is likely to be overstated because of the irregularity of review of the allowable expenses that can be deducted from weekly income¹³². In practice, however, the reconstituted family will not be in a worse position, regarding the quantum of financial outlay for "maintenance", if the ex-spouse receives the DPB, than if that spouse were self-supporting.

ENFORCEMENT OF THE MAINTENANCE OBLIGATION:

An aspect of law reform that has helped to smooth the period of transition between the divorced and remarried states for those who receive maintenance, concerns the enforcement of the maintenance obligation. Prior to 1981, there was great scope for disrupting the life of the payee by varying the amount and frequency of the payments. The time it took for the legal bureaucracy to prepare a summons was too long as far as the party entitled to the maintenance was concerned. By the time it was prepared, the liable party could pay the arrears and nullify the case anyway¹³³. How was the payee to survive in the interim period??

Researchers believe that the lack of compliance with maintenance orders is best explained by the absence or non-use of effective enforcement procedures¹³⁴. This problem is likely to be of less significance in New Zealand in the future because of the introduction of new enforcement procedures. Now, if there is:

- (a) Consent to the issuance of such a notice, or
- (b) Default by the payer for at least 14 days,

a MAINTENANCE OFFICER can attach a deduction notice to the maintenance payer's wages¹³⁵. The effect of such notice is to compel the employer to deduct up to and including, the amount to be paid under the maintenance order, from the employee's (liable spouse's) wages or salary every time he or she is paid¹³⁶. If the employer defaults in his payments, that money will become a debt owed by the employer to the person entitled

to receive the money under the maintenance order. Failure to deduct constitutes an offence carrying a maximum \$200 fine¹³⁷.

The deduction notice is likely to be more popular as a means of attempting to enforce the maintenance obligation than the attachment order - a notice of similar effect attached to wages by the Court. The former notice is available sooner because the procedure does not involve a hearing and can be invoked after fourteen days arrears in payment. Whether it will be more effective than the attachment order in encouraging compliance has yet to be seen.

Overseas research has shown that the highest rates of compliance resulted from the following system¹³⁸:

- (i) A self-starting system in which payments are made directly to the Court so that Court personnel can keep a watchful eye on compliance. As soon as a father is delinquent, action is initiated by the Friend of the Court - a publicly supported collection agency which pursues non-supporting fathers whether or not their ex-wives are on welfare benefits; plus
- (ii) A high probability of incarceration for continuously delinquent payers (i.e. fathers).

If the system chosen by the New Zealand legislation does not prove effective, the above scheme could well be a useful replacement. Compliance is a high priority goal of any maintenance system especially in the light of the emotional and financial impact non-compliance can induce. Financial stability can aid emotional stability which will thereupon

help parties to arrange selection into the remarriage population.

ADOPTION

Adoption concerns primarily those parents who cannot, for various reasons, provide care for their children and others who are willing to undertake this care. It extinguishes the legal relationship between the child and its natural parents and puts the child in the position of the natural child of the adoptive parent(s) born within the marriage¹³⁹. The process severs in a virtually irrevocable manner, the nexus between a child and the whole of its natural family - parents and relatives.

The situation just described, refers to adoptions by strangers but for present purposes, the adoption by non-strangers - i.e. relatives (and, in particular, a natural parent and a step-parent) is relevant. The adoption procedures are essentially the same in both cases but the effects are markedly different.

Joint applications by the natural parent and his or her second spouse are becoming proportionately more popular. From constituting 35.7% of adoptions in 1976, they now account for 45.7% in 1981¹⁴⁰.

Once the necessary consents have been obtained or dispensed with, an adoption order can be awarded. The effect of such an order is, inter alia, to confer the adoptive parents' surname on the adopted child and to sever the child's status as a child of the non-custodial parent. Such

severance will not per se, however, affect the non-custodial parent's maintenance liability¹⁴¹ - a questionable feature of the current law - neither will it always be voluntary.

The advantages of adopting stepchildren are both legal and psychological.

- Adoption is permanent and it gives the stepchild status and rights indistinguishable from any other child of the marriage.
- It can mean emotional security for many stepfamilies. The step-parent need not fear losing the child and any anxiety regarding the withdrawal of affection by the step-parent can be allayed. Also, the haziness of the incest taboos are ended¹⁴².
- The child takes the surname of its adoptive parents. This can lead to the elimination of the possibility of embarrassment to the child and can be administratively convenient at school. It may help to bond the stepchild to its step-parent if the child has a concrete means of identification with that parent.
- Because adoption takes away the guardianship rights of the non-custodial natural parent, it can eliminate the possibility of disruptive interference by that parent in the lives of the reconstituted family members.

The arguments against step-parent adoption are equally if not more compelling. They centre around the fact that adoption not only creates a new family link, but it also destroys an old one. Kinship links with brothers, cousins, grandparents

and uncles and aunts are wiped out as are links with the biological parent. This is especially serious, inasmuch as the child in step-parent adoptions is very likely to be an older child who will already know and be known by these relatives¹⁴³.

Before allowing these ties to be severed, one would want a guarantee that:

- (i) the motives for doing so would benefit the child's interests. A means of demonstrating commitment to the stepchild(ren) or a mechanism for exacting revenge on the ex-spouse are obviously unacceptable bases for invocation of the process of adoption. Obscuring of the fact of a previous marriage or ex-nuptiality are also examples of where adoption is being used for the adopter's advantage rather than the child's¹⁴⁴.
- (ii) there were no other less severe options available to the step-parent. The other practical effects of adoption can be obtained in other ways. Provisions for changing the child's name exist now and property rights can be taken care of by will. The step-parent can already be made liable for the maintenance of the child. Custody and guardianship rights could be vested in the step-parent by means of a joint custody order with the spouse who is the child's natural parent or by a guardianship order possibly jointly with the other natural parent of the child¹⁴⁵.

This solution would confer a legal status on the step-parent vis-à-vis the stepchild without severing one side of the natural family from the child.

The disadvantage as far as the step-parent is concerned is that it leaves the rights of a surviving natural parent intact, but adoption should not be allowed just so that these can be extinguished.

It is submitted therefore that adoption by a step-parent is unnecessary. The effect of such an adoption can be achieved in other ways without the severing of any relationships the child may have built up.

If abolition of step-child adoption is not possible, then counselling by a social worker should be mandatory before such adoption. Step-parents should be made to examine their consciences before proceeding with the adoption:-

- Do I need the legal status?
- Do I want the relationship with the child to continue beyond marriage?
- Am I ashamed to admit that my spouse has been married before?
- Am I after revenge or social convenience?

These questions could possibly be formed into criteria for a court to consider on an application for an adoption order by a step-parent. It would be preferable though, if a social worker could get the parties concerned to consider these questions at an earlier stage than in the courtroom.

Wise and sensitive parents will start with the stepchild's needs where it is possible to ascertain them. Stepchildren are likely to be older and have formed ties with the relatives

as mentioned above, so that it is critical that the child's wishes be considered. Severing the ties will affect the child's ability to achieve a sense of identity during adolescence. The stepchild is best served by the step-parent who sees himself as a person who adds to the child's life experience rather than a substitute for a parent¹⁴⁶. Some step-parents can further serve their step children through legal adoption but because this is not always the case, parents and step-parents should give considerable thought to such a decision.

CUSTODY AND ACCESS

There are unsuccessful divorces, just as there are unsuccessful marriages. A divorce can end a marriage but it cannot end the bitterness a man and woman may feel for each other. Both parties may spend years scheming to hurt each other; the battleground for such conflict usually being the children.

The war normally starts with the battle for custody - the right to possession and care of a child. The Family Court has the power to make custody orders over children, should there be no agreement between the parties. The welfare of the children must be the paramount consideration of the Court in making such order^{146a} but if this is to be ascertained only through contradictory evidence of how unsatisfactory the other parent is as a parent, the Court will have great difficulty in pin-pointing the child's best interests.

The reforms enacted in the FPA have gone a long way towards eliminating these difficulties.

The Act introduced the Mediation Conference as an alternative method of dispute resolution in the family arena. Essentially,

a Family Court Judge as chairman of the conference, mediates between the parties¹⁴⁷ over the issues in dispute. The main purpose of the conference is to try to obtain agreement between the parties on the resolution of those issues.

Why is mediation particularly suited to family disputes?

MEDIATION vs ADJUDICATION:

(i) Adjudication

Prior to 1981, adjudication was the accepted method of dispute resolution for family matters. However, an inherent characteristic of it is that a "winner" and a "loser" are established - everything is defined in terms of "rights" and "wrongs". At least 50% of the parties leave the courtroom unhappy - it nurtures bitterness and discontent¹⁴⁸. This may have existed already, but it will be exacerbated, making it more difficult for the parties to establish some kind of continuing relationship - a critical factor in custody and access disputes.

The corollary to this is that the enforcement of any order is made more problematical; if the parties don't like the solution they will not be encouraged to abide by it. Adjudication therefore aggravates and inflames situations where a "clean break" cannot be achieved.

(ii) Mediation

Mediation is more conducive to establishing a continuing relationship between the parties. Because the parties are encouraged to agree and settle their own disputes, the solution is more likely to provide an amicable foundation

for their new relationship. Consequently, there will be no real sanction needed for the agreement. As the parties are personally involved in the resolution of the conflict, the result is not dependent on the skill of their legal representatives¹⁴⁹.

The Mediation conference has been a successful innovation to NZ Family Law. Only 7% (approximately) of custody applications have gone to a defended hearing¹⁵⁰. This is despite the fact that the mediators have undergone no formal skills training in mediation - a testimony to the fact that the change in the process of dispute settlement away from the adversary system has been the major contributing factor to the success of the conference.

If the Mediation Conference does not result in agreement and the case goes to a full hearing, the true interests of the child demand that they be properly and independently represented and that there be counsel appointed to ensure all relevant facts are placed before the court. The authority for appointment of a representative for the child appears in several statutes but appointments are most commonly made under s.30 of the Guardianship Act, 1968¹⁵¹. Under s.30(2) the appointment is mandatory when it appears that the proceedings are likely to proceed to a hearing (unless the Court believes the appointment to be of no benefit).

Role of the Child's Representative

The child's lawyer must have regard to the welfare of the child as the first and paramount consideration. Inter alia, the activities to be undertaken by the lawyer involve ascertaining

the wishes of the child and ensuring that such evidence is before the court. What must the lawyer do if he or she feels that the child's preference as to which parent he prefers is not in the child's best interests? The "welfare of the child" standard with its lack of specific content, fails to provide criteria by which to judge the correctness of the child's preference. The question appears to be of academic interest only, because in practice, the lawyer will rarely oppose a clearly expressed preference by the child¹⁵². Generally the Courts give considerable weight to the children's wishes, but never feel absolutely bound by them.

The effect of these two procedural elements of dissolution on custody issues is

- (1) to focus the participants' attention on the family as the unit of concern, and
- (2) to attempt to encourage amicable and mutually supportive relationships among the members of a family disrupted by parental separation and dissolution¹⁵³.

The emphasis is on rationalising the divorce process so that obstacles in the way of organising a remarriage family are eliminated. The main obstacles are poor relationships between members of that family and former spouses which traditionally have been aggravated

- (i) by the competitive public nature of the adversary system, and
- (ii) by the fact that the interests of the child have been

presented to the court by competing parents' advocates, thereby ensuring a win/lose situation.

The mediation conference takes some of the trauma and stress out of dissolution and the appointment of a child's representative results in a custody order that is imposed on the basis of independent evidence in the best interests of the child. Parties emerge from dissolution with dignity and pride, often having sorted out their problems themselves. They are more willing to accept a custody order to the other parent as the best result in the circumstances and more determined to get on with constructing a new life for themselves. The battle for custody turns out to be a "fizzer".

The flow-on effects of a "tie" in the first battle are that the husband is less likely to fight reasonable requests for additional maintenance that he can afford and his ex-wife will probably not do everything in her power to keep her ex-husband from seeing their child(ren).

The Court can make such access arrangements for the non-custodial parent as it thinks fit - even if that parent is a step-parent. Prior to 1981, problems concerning non-custodial parents being denied their access rights by those with custody, were sufficiently significant for parliament to create the new offence of hindering access with a maximum fine of \$1000¹⁵⁴. This offence indicated legislative recognition of the importance of the natural parent-child relationship in the development of a psychologically balanced individual. Withdrawing access is from the absent parent's point of view, practically equivalent to adoption and as discussed above,

this can affect the emotional development and threaten the core of a child's personality.

There was clearly a need for such a provision, but if the bitterness that causes access hinderance is assuaged, resort to this offence will be rare indeed. One aspect of custody that could help to keep offences under the section to a minimum is that of shared custody.

SHARED CUSTODY

Shared custody arrangements allow both parents, despite the ending of their marriage, to have the possession and care of their children in a roughly even split regarding time. It is different from sole custody with liberal access because under the former arrangement, both parents see themselves as active parents rather than one the parent and the other the visitor as under the latter arrangement. Shared custody has a positive psychological effect on the parent who would have been the visitor, which leads in turn to a more enduring relationship between the parents and the child. The child has two psychological parents and two homes. Also, this arrangement results in normal parenting from both parents¹⁵⁵.

The sharing of custody may be a factor contributing to the reduction of parental hostility and conflict because the sharing arrangement meets each parent's need more completely.

Shared custody has a "myth" associated with it that it does now allow the parents to separate (i.e. it negates a "clean break"). In some cases, a wish to share custody by individual parents may represent an inability to let go of

the marital relationship but there is no justification for treating this as the usual motivation. Sharing need not be an obstacle to a healthy separation of the parent's emotional lives.^{15a} Indeed, one researcher concluded from a study of separated parents co-parenting in the raising of their children that they had clearly shown the ability "to continue a co-parenting relationship while terminating both legally and emotionally, a spousal relationship."^{15b}

If this arrangement is to be accepted on a large scale in New Zealand, then it must be a choice for the parents and the children rather than imposed by a statute or court. There should, however, be a procedure whereby the arrangement is continually reviewed because if one parent remarries a partner who does not get on with the children, an alteration of the agreement is likely to be needed. The increasing remarriage rate today will lead to the frequent occurrence of the above situation and emphasises the necessity for flexibility to be built into the arrangement.

SUMMARY

The entire emphasis of the substantive and procedural law relating to dissolution has shifted from the past to the future. From the changing of the terminology to the alteration of the procedure for dividing up matrimonial property, the law has focused its concern on the ability to re-establish one's life as quickly and securely as possible. It is concerned to see that the emotional scars from dissolution are not so great that the parties are ineligible for remarriage. It also attempts to provide a financial base for the parties

so they can go their separate ways without the need for one party to continually be dependent on another for support. The law therefore can be said to be an effective catalyst in speeding up the complete separation of two highly volatile substances. It does this by reducing the heat of reaction. Cooling the mixture down results in the precipitation of two compounds that can be separated, stored in different parts and put to new uses in the future.

The reaction starts with the addition of the law to the mixture in a process called legal dissolution. The process has been refined by the addition of new elements such as the Mediation Conference and a more informal hearing in which the outmoded adversary process has been laid to rest. This new process is designed to prevent the materials from scarring - something that is very difficult to achieve. It has helped to stabilise the internal structure of the compound and smooth its appearance but its affect can only be limited. It is, however, a necessary first step.

It is the other substantive elements of the catalyst that determine the speed and success of the reaction. Regarding the provision of a financial base and interim support, the law has tended to favour the husband, at the expense of the wife. By not recognising "career assets" and by ordering the sale of the matrimonial home to achieve a "clean break" between the parties, the law has adversely affected the financial position of the wife who will usually have custody of the young children (if any). Whether such material deprivation results in a NEED to remarry for many wives is speculation

but definitely not outside the realms of possibility given the likely low value of matrimonial property and the low socio-economic position of many divorcing couples.

"Clean-break" should be a secondary goal of matrimonial property division once equality has been achieved - especially in relation to superannuation schemes - a potentially high-value asset.

Maintenance is the element mainly responsible for the speed of the separation. The policy behind it is future oriented but its effect is often negated by "impurities" such as custody and access orders. The custody order is likely to cool the reaction down because it will be the result of either agreement between the parties or an order based on independent evidence. It will prolong the separation but the relationships within the "mixture" will reflect the compromising atmosphere.

Thus far, we have looked at the effect of the law in allowing the parties to attain entry into the remarriage population. For those who do remarry, the legal encumbrances do not suddenly disappear. Custody orders remain in effect and a spouse's liability to maintain will continue. Yet the law has maintained its future orientation. The first family of the liable spouse will no longer have priority over the second family. The possibility of resentment regarding the payment to the first family is lessened and stress is thereby removed from all relationships within and outside the reconstituted family. Adoption is the only really unsatisfactory part of the process. There are potential side-effects of some gravity and this stage of the process

requires further investigation to generate some empirical evidence on the effect of stepchild adoption on the stepchild.

Overall, though, the law is an effective catalyst in separating the parties and preparing them for remarriage. Once in the remarriage, the legal encumbrances are temporary and the parties are able to concentrate on the emotional and psychological needs of the reconstituted family.

RECONSTITUTION

This section will deal with those people from the divorced population who have been selected into the remarriage population. It will look first at the process of reconstitution of these people into a second family unit. Then, it will consider the relationships within the "new" family, some of the problems that are incurred in these relationships and the variables that aid adjustment to these relationships. Following this analysis, the importance of each relationship to the total integration of the family will be considered.

Finally, the rewards of remarriage will be looked at along with some comment on the success of remarriage and the likelihood of redivorce.

The reader must keep in mind that almost all of this material is from jurisdictions outside New Zealand. The lack of New Zealand research eliminates the opportunity for any comment as to the applicability of such information, to the reconstituted family here in New Zealand. The interviews

undertaken by the writer were not sufficiently numerous to prove with any rigour, the hypotheses suggested by the overseas research. They were conducted merely for illustrative purposes to try and establish the range of problems encountered by the stepfamily rather than to ascertain their frequency of occurrence.

THE PROCESS OF RECONSTITUTION

The process of reconstitution must be looked at to give some clarity to what is a very complex¹⁵⁷ and confusing situation.

The reconstituted family has been defined earlier as "any family in which at least one of the adults is a step-parent"¹⁵⁸. This includes families where the children live with a remarried natural parent and a step-parent, families where the children from an earlier marriage visit with their remarried parent and step-parent and families where the couple are not married but children from an earlier relationship live or visit with the couple. Each of these family structures has properties and problems unique to itself, but only the common ground of these reconstituted families can be dealt with here.

All families develop through stages, that have characteristic issues and conflicts. There are, four stages that are passed through in arriving at the reconstituted family: stage one, the family of origin, refers to the family of origin of the adults involved in the reconstituted family; the nuclear family stage¹⁵⁹ refers to the nuclear families that at least one if not both of the reconstituted couple were a part of in

their first marriage; the solo parent stage is the time between the dissolution of the nuclear family and the formation of the reconstituted family; finally there is the reconstitution stage where the new family is formed.

Several variables affect the process, such as¹⁶⁰:

(i) TIME

The time spent in one stage has an important effect on what happens in that and subsequent stages. For example, if a long period of time is spent in the solo parent stage, the emotional relationship between the parent and his or her child may become very close, with a consequent weakening of generational boundaries¹⁶¹. This closeness may prevent the parent from forming a close inter-spousal relationship in the reconstituted family.

For this family, time is necessary to integrate the variability of the two merging families. It takes time to sort out roles but this will be discussed further later.

(ii) STRUCTURE

The structure in the family of origin will have an effect on how the parents react in subsequent families. The structure of the nuclear family is two parents and their biological or adopted children, and of the solo parent family - one parent and his/her children. The structure of the reconstituted family, as mentioned above is complex. There will be an adult couple, EACH of whom may have children, all, some of none of which may live with the family. The father OR mother

may have children, again, all, some or none of which may be living with their parent. If they do not live with their parent, they may visit (ir)regularly, (in)frequently.

Each structure has its own problems - for example, the step-father living with his own children will have different problems to those of a step-father whose children live with their mother.

(iii) BOUNDARIES

The boundaries of the nuclear family and solo parent families are generally fairly stable. In the reconstituted family the natural parents of one or two groups of children, will be outside the boundary. As the children come and go between two families, the boundaries change which often leads to loss of control by parents and ambiguity for all family members.

(iv) NORMS

As mentioned previously, society provides no guidelines in the form of expectations and roles for members of the reconstituted family. The mother or father role is inappropriate for the stepmother or stepfather role: nobody knows what he is expected to do or feel¹⁶².

Difficulty in adjusting to the step-parent role is compounded by the confusion over the role - they are told to treat the children as their own but not to try and replace the absent parent.

(v) RESOURCES. The physical resources have already been discussed but the nuclear family also accumulates psychological resources

as it develops which must be split at the time of separation. There will often be fear on the part of the children that their psychological bond with one of the parents will be parted with.

These are some of the common factors that are important in the formation of the reconstituted family: they are important in identifying and helping one understand how a reconstituted family differs from, in particular, a nuclear family. The belief that once a family has been completed by the addition of a second adult, all will be well is uninformed. Marriage is an internal adjustment process which is always tending either towards the establishment of "a more perfect union" or the disruption of that union¹⁶³. The former trend prevails over the latter, just as health prevails over disease, but there are problems specific to the situation of the reconstituted family regarding the adjustment of members of the family to each other.

Because a major concern of this paper is how the reconstituted family group is transformed into a primary group, family integration is one of the main indicators of how successful the integration has been. We will now turn to look at the problems regarding adjustment of the members to each other and to outsiders and the variables that influence the successful integration of members into the family unit.

RELATIONSHIPS WITHIN THE RECONSTITUTED FAMILY

Underlying all adjustments is the crucial task of establishing a new pattern of family relationships that will enable a child

to maintain a satisfying relationship with the natural parent and yet build towards solidarity within the new family unit: the task is one of developing a workable family structure out of a network of relationships - new ones seen with both hope and trepidation and old ones fraught with mixed loyalties, disappointment and strong attachment.

The relationships must develop the intimacy present in the nuclear family yet preserve ties with important family extensions¹⁶⁴ (i.e. the other parent and grandparents).

The first of these relationships to be considered is:

(A) THE HUSBAND-WIFE RELATIONSHIP

A primary early task of the remarriage is the development of a close inter-spousal relationship with a way of negotiating conflict without drawing the children in as go-betweens.

This can mean that the couple must sacrifice the essential time together with the children in order to cement their relationship.

The Problems of Step-Parents

A study was carried out in the USA on 88 couples who had remarried between the years 1965-1968 and who only had children under 18¹⁶⁵. These couples were interviewed at great length and the findings will provide the bulk of the material on the relationships within the reconstituted family, not because of the irrefutable or astonishing nature of the findings but because of their comprehensiveness and usefulness in establishing hypotheses for future research in New Zealand.

The problems that the couples identified were generally the same as for primary marriages - money, child-rearing, sex relations, religion, outsiders - but the order was reversed in the first two problems. Child rearing was the major area of disagreement followed by money¹⁶⁶. This is to be expected because the children are brought together from at least two ultrastable subgroups (solo-parent families) - two homes that are very likely to have different standards and values.

Before the question of what effect the quality of their relationship has on the integration of the entire reconstituted family, the factors that affect this relationship must be examined. On what is a good husband-wife relationship dependent?

- (i) Education: The more education the husband has, the more he is likely to have a successful relationship with his second wife. The wife's education does not seem to be important¹⁶⁷.
- (ii) Previous Marital Status: Fewer previously divorced spouses than previously widowed rated their second marriage as excellent¹⁶⁸. Dissolution is still somewhat stigmatised and it is therefore likely that the desire to remarry for the divorced person seeks an escape from an uncomfortable social position - the widowed person does not. The divorced are more likely to have younger children and they may be anxious to acquire a surrogate parent. The implication of this is that divorced people tend to remarry more quickly than widowed people¹⁶⁹. There may

be less careful consideration given to the choice of a new partner resulting in a less stabilised husband-wife relationship.

- (iii) Social Class: the higher the social class, the higher the rating of the husband-wife relationship. Studies have shown that good marital adjustment increases with social status¹⁷⁰.

Neither AGE nor RELIGION were factors influencing the success of the relationship - nor were the ages or sex of the step-children.

It was found finally that the husband-wife relationship was a strong influence on the integration of the reconstituted family. When the husband and wife had a "poor-to-good" relationship, the family's integration was likely to be "low". When they had an "excellent" relationship, integration was likely to be "high"¹⁷¹. Family solidarity is dependent on this relationship to a large extent.

(B) STEP-PARENT - STEPCHILD RELATIONSHIPS:

Two aspects of the relationship must be considered:

(i) The Children's Adjustment to Step-parents:

Two studies¹⁷² have reported that the mental health consequences for children living in a remarriage family were worse than for those children living in a family broken by bereavement or divorce without remarriage. It is not easy for a child to accept his step-parent, but another study of students from unbroken, broken, and three categories of reconstituted

family revealed that no significant differences in personality existed between any of the students¹⁷³. It is important to recognise though that in such a potentially and often actually stressful situation the consequences of a child's mental health must be taken into consideration as of paramount importance.

Children embody the history of the past marriage, and to consider their difficulties is to reopen old wounds. However, when looking at the problems of adjustment of children to the step-parent, the change in life-styles between the first family and the new family must be looked at as a source of poor adjustment. Familiar household routines may be disrupted; children may have to change residence and move away from familiar surroundings; the step-parent may bring other children into the house - "only" children may feel displaced because of this; the step-parent may be from another social, cultural or religious background¹⁷⁴.

Feelings of being unloved and rejected, experienced on losing a natural parent may increase when a step-parent joins the family. A child's experience of death or divorce of a parent involves an interruption in the process of learning to love and being loved. Children handle the interruption in different ways depending on the nature of the original relationship, the age at which the separation occurred and the way in which the remaining parent reacted to the divorce or death¹⁷⁵. It is possible that the interval between death or divorce and remarriage will accentuate the feelings of being unloved and rejected, in which case, the child may feel isolated both from his parents and siblings when he sees

much of his parent's energy directed towards the new spouse and stepchildren.

The feelings of loss may lead to comparison of the step-parent with the absent natural parent and rejection of any attempt by that parent to exert authority in the household.

The interval may also have fostered a too close parent-child bond. Children in this situation may thus see the step-parent as threatening their relationship with the remaining natural parent.

If the child has witnessed a hostile break-up, there may be a reaction to the step-parent involving disturbed behaviour such as aggression, feelings of guilt or withdrawal¹⁷⁶.

The rapid replacement of the absent parent may lead to a great deal of confusion especially amongst those children who saw the natural parents' relationship as a good one¹⁷⁷.

When the parent takes a new partner, children may suddenly become aware of this parent's sexuality. Closeness within the new family must have the clarity of incest limits and the support of both parents for those limits. One of the hardest things for a child to deal with is the recognition of his parent's sexuality. It is more difficult for a child to resolve an oedipal conflict with a step-parent than to resolve an oedipal conflict with a natural parent.

The implications of poor adjustment to step-parents have been indicated by Bill Cruize¹⁷⁸ when speaking of the Australian situation which he saw paralleled in New Zealand. In Kings Cross, large groups of young children congregate outside at

night, not because they have no parents, but because their parents have remarried and are too caught up in their own emotional turmoil to give time to the children. The children react to this by withdrawing from the situation. In Sydney, of all five year olds starting in any one year, one quarter of them will spend time with only one parent before they are twelve. These groups of children were present in Auckland he said. This is the visible consequence of a problem of increasing gravity.

However, step-parents have as much trouble adjusting to their step-children as evidenced by their over-representation in the domestic violence statistics¹⁷⁹.

(ii) Problems of Step-parent's Adjustment to Stepchildren

Several studies suggest that the stepfather is more likely to establish and maintain a good relationship with his step-child than the stepmother¹⁸⁰. This is due primarily to the greater involvement with the children; she spends more time with them and thus there is more opportunity for disharmony and friction to develop.

Stepmothers appear to get on better with younger than older stepchildren. The young child is more apt to be trustful and accepting than the older child, who is more likely to have built up loyalty to the absent parent. These older children are more accustomed to only one set of parental expectations.

There is always present in the step-parent's mind, the knowledge that care of the stepchildren is a matter of DUTY rather than CHOICE.

Also, the need for success in dealing with the children leads to constant anxiety.

The role confusion has been mentioned. Most writers agree that the mother should not move too quickly into the role of substitute parent - after all, in the case of remarriage after divorce, the step-parent is not a replacement parent but rather an ADDITIONAL parent. In general, these authors state that the nuclear family is not the appropriate model from which to draw role models for acquired parents¹⁸¹. It is felt by one author that remarriage families cannot have the same cohesiveness and commitment expected of a first marriage family because children are still relating to a parent living outside the boundary of the new family. Adoption of stepchildren may be resorted to, in order to overcome this problem but there are substantial disadvantages in this solution.

Step-parents often have a limited knowledge of the background of stepchildren. Although the step-parent has shared no history with the child, he is expected to fill a role that is both conducive to the child's sound personality development and at the same time, compatible with the role of the other parent.

There may be disappointment on not developing a good relationship with the children straight away. Step-parents often feel defensive because of the knowledge that the success of the marriage depends to some extent on their success in dealing with the children. One of the primary concerns of the step-parent, therefore, in the early stages of the

reconstituted family, is to immediately develop closeness with the step-child. The early stages are the most stressful, as the chaos is sorted out, and this objective is often frustrated resulting in feelings of dissatisfaction and discontent.

There may be feelings of sexual attraction to the step-children - particularly if they are adolescent. Particularly problematic is the adolescent girl and her stepfather. These are disturbing feelings and very disruptive of family stability, resulting in a high rate of running away¹⁸².

(iii) Variables Affecting the Relationship

Duberman found that education level and age of the step-children did not influence the quality of the step-parent's relationship with the stepchildren. She found also that whereas age did not influence the stepfather's relationship with his stepchildren, older mothers were less likely to have excellent relationships with their stepchildren¹⁸³.

The most influential variables in the relationship were:

- (1) The advent of "new" children from the present marriage.

The advent of "new" children in a reconstituted family enhanced the relationships between stepchildren and step-parents. The reason is not documented but it may be that having the child secures them in their own relationship.

- (2) The relationship between the husband and wife.

As could be expected, the relationship between the spouses has a large influence on the relationship between the step-

parent and the stepchildren.

If the relationship is not favourable, the step-parent is likely to withhold affection from the stepchild. If the marriage is successful and a step-parent is satisfied with a new spouse and a new marital role, then it is likely that this will exert a positive influence on the relationship between that step-parent and the stepchild.

These findings apply directly to the nuclear family where child-parent relationships are influenced in the same manner by inter-spousal relationships¹⁸⁴.

This is evidence supporting the proposition that reconstituted families do not differ significantly from primary families.

Families where excellent step-parent/stepchild relationships existed tended to be very well integrated but this relationship was not as influential on integration as the husband-wife relationship.

(C) SIBLING - STEP-SIBLING RELATIONSHIPS

The remarriage creates new sibling relationships. Sometimes two sets of children (one from the man's former family and one from the woman's) are brought together into the new family unit. More often, the husband's children are visitors, of varying degrees of frequency, with the woman's children as permanent residents.

Older siblings make early socialisation more complete because they provide peer role models and training in co-operation,

and the management of conflict. They offer each other love, companionship and emotional security. Having a sib involves learning early how to share privileges and obligations.

Duberman found that very few of the families studied exhibited these positive aspects of sibling relationships and that the negative aspects such as envy, rivalry, jealousy tended to prevail. Few of the stepsiblings studied had formed meaningful relationships, however almost one half of the relationships had changed for the better¹⁸⁵.

Variables Affecting the Relationship:

Where remarried spouses had a child during their second marriage it helped the children from former marriages to form good relationships with each other. This may have been because the child could serve as a bond between the two groups owing to feelings of affection towards the child, or it could have served to unite them in mutual jealousy. A note of importance though is that if both partners bring children to a remarriage they are unlikely to have children together¹⁸⁶.

The expectation that the more highly educated parents would be more capable of helping children adjust to a remarriage (especially because of their greater sensitivity and awareness) was not borne out. Neither was the expectation that young parents would have children who got on well together because they would be more apt to understand sibling rivalry and jealousy than older parents.

However, excellent husband-wife relationships and step-parent-stepchild relationships did influence the step-

sibling-sibling relationship positively. This latter relationship obviously had an effect on total family integration: when there was friction in this sub-group, the entire group was affected¹⁸⁷.

(D) RELATIONSHIPS WITH OUTSIDERS

Marriage does not occur in a social vacuum. A study which concentrates only on the individuals involved will be incomplete. The family exists within a set of social relationships with people outside the unit. The reconstituted family is a new form of the extended family which means that there is a wide variety of people with whom parents and children can form relationships and identify with.

(i) Kin

In some cases Kin may disapprove of the new family being formed. Children then become distressed at losing contact with relatives with whom they had close ties. Grandparents can cause special problems. They may try to undermine the step-parent's position - especially if they enjoyed looking after the children before the parent took a new partner. They may then give gifts to compensate for time lost which annoys parents and causes hostility between the grandchildren and stepgrandchildren who receive no special treatment¹⁸⁸.

"In-law difficulties" appear more common and serious in youthful remarriages. One would therefore expect them to constitute less of a problem in remarriage generally than in first marriage. This is not to say that they are no problem though. The family of each mate may take sides:

both the parents and the former in-laws of the remarrying divorcee may take sides against the new spouse. The new in-laws may take sides against the remarrying person. The marital pattern may also determine the reaction of in-laws, e.g. if previously unmarried child marries a widow(er) or divorcee, they may object because of

- (1) the age difference,
- (2) the implications of scandal.

The parents of widowed people, in one study, looked with almost as much favour on the second marriage as they did on the first. This is to be contrasted with the parents of divorced parents who reported that their attitude to the second marriage was more favourable than their attitude to the first marriage¹⁸⁹.

(ii) Friends/Community

The social life of a couple married after divorce may be difficult especially if they live in the same community in which the former spouse lived or lives. Former friends may shun both the unmarried and the remarried spouse to avoid taking sides. The new couple may thus become socially isolated.

The lining up of friends with one party or the other is probably not as prevalent now that fault grounds have been removed from divorce and there is no longer a guilty and an innocent party.

Difficulties regarding the community attitude often stem not from disapproval or hostility towards remarriage but

rather from CONFUSION. People's image of the remarried divorcee has been destroyed and they do not know how to treat him. The remarried spouse may still be liked as a person but be deemed to have played the role improperly: the violation of the rules has destroyed the orderly sequence of their own moves. Thus the community adjustment to the remarriage is a matter of role expectations: remarriage shatters the image of people so that routine interaction may be uncomfortable¹⁹⁰. One positive way that friends and relatives can influence the marriage is to allow the parents in the stepfamily time away from the children to develop their own relationship free of family obligations. Children resent step-parents trying to act as natural parents too soon¹⁹¹ and this would give the couple time to sort their own relationship - the most important for ensuring the integration of the whole unit.

Duberman merged these two external groups and found that almost half of the couples believed friends and family considered the reconstituted family as suitable and admitted it into their friendship networks. These couples also felt that a majority of all outsiders accepted the reconstituted family - an expected result because society feels that the adult should be married.

(iii) Ex-Spouses

Where the former spouse is still alive, problems are very likely to be introduced into the remarriage. The divorced woman perhaps because she is less likely to remarry than the divorced man is more likely to constitute an obstacle to the success of her ex-husband's remarriage than is the divorced

man to his ex-wife's remarriage. The divorcee is expected to feel indifference yet jealousy, paranoia and desire for revenge are some of the feelings commonly experienced towards the remarriage of an ex-spouse¹⁹². There may be attempts to drive a wedge between an "ex" and a new spouse.

These feelings are as typical of men as women in such situations but Duberman found that husbands in her sample had more trouble with their ex-wives than the women in the sample had with their ex-husbands. The wife did not find the ex-husband's influence in her reconstituted family to be of great consequence. However, often the husband feels that the wife is a negative influence in his new marriage - problems arising in general over maintenance, access and the jealousy of the second wife towards the first and her possession of the children.

Most remarried people are indifferent towards their ex-spouses although men are more likely to feel negatively towards ex-wives. It appeared from her findings that the step-parent-stepchild relationship wasn't affected by ignorance or rejection by outsider groups. A predictable finding was that when outsiders accepted the family, the husband-wife relationship was more likely to be "good". However, rejection had positive effects for this relationship: an "us against the world" stance was likely to be taken if couples felt outsiders had rejected them. But overall, outsiders' attitudes are not a strong influence on the total integration of the "new" family.

The couples expressed anxiety about being considered a traditional family¹⁹³. Whether the reaction was positive,

negative or indifferent, what counted was that they should not appear different from what they believed was the typical family.

RECONSTITUTION AND TRADITION

Based on the findings of the Duberman study, a comparison was made between the characteristics of the traditional family, the reconstituted family and the nuclear (ideal) family. It was found that the traditional family was very similar in four items, different in three, with no information available for four items. The reconstituted family was very similar to the nuclear type of family in four items, partially similar in sixteen items and different in one item and no data was collected for three.

Duberman concludes that because the degree of similarity is difficult to ascertain, the traditional family could be said to be at least partially similar to the nuclear family in seventeen items and the reconstituted family could be said to be similar in twenty characteristics^{19*}. However, it is the writer's belief that this is to be over-generous to the reconstituted family. A characteristic of the nuclear family is that the older children act as surrogate parents for the younger children by serving as stimulators, protectors and socialisers. However, in 38% of the families containing two sets of step-children, there were poor relations and in only 24% of those families were the stepchildren's relations excellent. This is only very marginally similar to the nuclear family and it appears that in several other characteristics there is a large divergence between the two familial

typologies - notably the following characteristics of the nuclear family were not present in even a majority of reconstituted families.

- (i) Mutual love between parents and children.
- (ii) There is mutual respect between parents and children.
- (iii) Parents and children share many values and enjoy being and doing things together.
- (iv) The having of children is a vital aspect of marital satisfaction.

However, this criticism must be tempered by the fact that three out of five couples said that relationships within the family were improving. The research families were not stagnant, on the whole, and only time will tell how similar to the nuclear family they become. Also these couples were very self-conscious: they were aware of what was happening in their families and were still trying to be "NATURAL" families. As one wife put it, "You must want to make it work. You have to keep trying every minute."¹⁹⁵ Achieving what they saw as an ideal structure was a value they were striving to obtain and therefore, the chances of the reconstituted family working out its problems would appear favourable¹⁹⁶.

THE SUCCESS OF REMARRIAGE

It would appear that often, however, the members of reconstituted family do not solve their problems. Several studies reveal that remarriages are not as enduring as first marriages¹⁹⁷ and further that the divorce ratio increases for

each successive marriage. Instability appears to be a characteristic that is increasingly being attached to remarriage but marital stability and success are not the same. Many stable marriages are not successful, in the sense of serving the needs of the spouses, and some marriages which are successful for a number of years, end in divorce¹⁹⁸. To establish the success of remarriage, the best evidence can be gained from the reported marital happiness of people in intact remarriages.

Some of the negative influences such as

- (1) step-parent, stepchildren relationships,
- (2) financial difficulties,
- (3) people who are poor marriage risks carrying their risk factors from one marriage to another,

have been dealt with earlier. The positive influences, including:

- (1) a greater maturity and experience,
- (2) an ability to profit from past mistakes, and
- (3) more realistic expectations of marriage,

do not appear to be outweighed by the negative influences because no significant differences were found between the ever divorced and the never divorced in relation to reported marital happiness¹⁹⁹. A limitation should be appended to this finding, that remarried divorced people are likely to overstate their marital happiness to convey the impression that they "got it right" this time. Nevertheless, prima facie it can be concluded that despite the increasing divorce rate, marriage and, in particular, remarriage, is still serving the needs of individuals.

No research has yet been completed in New Zealand on the rate of redivorce but certain limited statistics are available. Few of those who are divorcing each year have experienced at least one divorce before. As a percentage of remarriages each year, this represents approximately 20%²⁰⁰.

76.23% of remarriages for men that ended, ended within 15 years, compared with 75.23% of female's remarriages²⁰¹. Thus one conclusion that can positively be drawn is that previous divorce experience is conducive to divorce in a subsequent marriage.

In Patterson's study on divorce in New Zealand²⁰² she was able to refute the expectation that whatever predisposes people to divorce, operates more decisively in the case of those redivorcing. She found that the majority of the variables studied displayed no stronger correlation with redivorce than with divorce. Socio-economic mobility only moderately correlated with redivorce but was a strong correlate of divorce. Indeed, some variables operated inversely to their contributory role in divorce - working women were much more redivorce prone than those not.

The finding of weakening influence of some of the higher-ranking variables for divorce is not surprising because they were factors concerned with the first wedding (for example, the type of marriage ceremony, and bridal age) or the period before it (i.e. the timing of the first pregnancy)²⁰³. It would be expected that after a period of time, their impact in precipitating a second divorce would be diminished. Variables operating in the on-going situation would be the most influential.

The redivorced group tend to be²⁰⁴:

- (i) Non-Catholic,
- (ii) Have a working wife,
- (iii) Have no children or independent children,
- (iv) Stable or static socio-economic status,
- (v) Be socio-economically incompatible.

Many people entering a step family minimise the difference between it and the original family. They enter the relationship confident that everything will work out because they want it to. The expectations are that the step-parent will love their children instantly. Previously unmarried parents expect to be able to parent very well right from the beginning. Some expect to make up to the children any previous hurts or to receive the benefits of all the family life they have missed.

However, such expectations are often unrealistic and stay unrealised. Success in a stepfamily requires honest communication, a willingness to define and clarify roles and expectations, and an ability to laugh at and learn from mistakes. It requires a sincere desire to make it work and a willingness to put in the necessary effort²⁰⁵. If the groundwork is put in the rewards of remarriage can be many. While it appears that many remarriages are going to end in dissolution, if a remarriage works, it can provide complete fulfilment to the parties involved.

THE POTENTIAL REWARDS OF REMARRIAGE

All of the remarried people interviewed by the writer agreed that the advantages of remarriage far outweighed the

disadvantages. One of the important ways a second marriage differs from a first is that the days of being a novice adult - not knowing who one is, or where one is going - are generally left behind. These people have formed their habits, their ways of life are familiar routines - his bank account is visible, she has decided whether she likes children and homemaking or a career, their characters are more observable. Whatever he or she is, one has a better idea of what one is getting (and giving) the second time around²⁰⁶.

HAPPINESS

The random sample of remarried couples revealed that though there were problems, there was an impression in respondents that their second marriage was without doubt an experience of more pure and deep happiness. Whether this happiness was due to the maturity of being older or the experiences they had had was impossible to tell. One aspect of happiness that could be discerned was that the quality of the happiness was higher. Second marriages seemed to inspire a more penetrating, profound relationship.

There are a number of elements that go to make up the sensation of happiness. Their relative influence on the marital couple's happiness was revealed to be as follows:

- (a) Sex the second time around is better. A logical but untested reason for this is that the couple wants love, sex and a new secure life very much, having been out of the mainstream for some time. Having had no sex at the time of divorce, and possibly having had sex

without love since, people are very receptive.

- (b) Openness: There is a greater candidness and honesty in the second marriage. There are fewer moments where feelings have to be suppressed to avoid causing pain. Both parties are no longer overwhelmed by marriage. There is generally no longer the competition inter partes and people tend to enjoy each other and take a greater interest in what the other person is doing.
- (c) Happiness comes in part from knowing what you want, from wanting something attainable and then attaining it. People have a more realistic attitude to what they can demand of a marriage and another person. What the husband/wife should be like, what life should be like, now play virtually no part in the relationship²⁰⁷. These expectations that were not realised in the first marriage have been refined by a greater understanding of the new partner and oneself.
- (d) Greater Tolerance: The greater openness and understanding in remarriage results in a more gentle tolerance with which the parties treat each other. Minor irritations are of little importance. The new relationship is too crucial to waste emotions on which way the toilet paper should be fitted into the holder.
- (e) Sharing of Interests: Couples tended to find that they enjoyed a lot more common interests and were more open to new interests and people. Being able to care about the other person's interests and work enables more parts of one party to be in love with more parts of the other.

- (f) Sense of Humour: This is a quality valued by all respondents as being central to the parties' happiness.
- (g) People Try Harder: Not only are the couple more familiar with what it takes to make a remarriage work, they appear to try harder to make it work²⁰⁸. They are more "tuned in" to the nature of the relationship and find it easier to deal with their problems.

With everyone making such a concerned effort and with all the inherent rewards/benefits of remarriage, with people declaring that they are happier the second time, it seems that despite the problems outlined above, remarriage is one type of marriage that is worth having.

CONCLUSIONS

It is clear from the literature and the interviews that the most common and serious problem faced by the remarried spouses in a stepfamily situation concerns the stepchildren. The problems of adjustment by the stepchildren to the step-parent and vice-versa are multi-causal and can result in behaviour ranging from aggression to withdrawal.

Regardless of the skill and desire of the step-parent, success as a "parent" is unlikely because the child is likely to maintain a relationship with the absent biological parent so that the step-parent can never totally assume the position of parent. Step-parents are prepared to recognise this. Take, for example, the following advice from one step-parent to another who was about to remarry:

"If the child is young and you can raise him like your own, go ahead. If the child is older, just try to love him as much as you can."

Given the importance of the step-parent-stepchild relationship for the total integration of the reconstituted family, it is critical that a very good relationship between the child and the step-parent be developed.

The law does not appear to be able to offer much assistance in the resolution of this essentially emotional problem.

The prima facie solution to this problem is the one that step-parents are increasingly resorting to - adoption. This may be in the hope that the child will invest all his or her emotional resources into the relationship with the adoptive parents. Such a hope is likely to be in vain as a legal pronouncement will not effect an already established relationship between a child and an absent natural parent.

The law should rather be looking to safeguard the child's need for continuity of relationships. The implication of this for the law is that it should place children where these needs will be protected and then leave the family completely alone.

Constantly ongoing interactions between parents and children turn physical ties into psychological attachment. These ties are weakened by state intrusion (for example via the law). Parents must have an uninterrupted opportunity to meet the developing physical and emotional needs of their children so as to establish the familial bonds critical to every child's healthy growth and development²⁰⁹. Therefore the

onus on the law is to put the onus on the parents to provide the necessary care having been provided with the autonomy and independence necessary to carry out on-going parenting.

Legal encumbrances that hangover from the dissolution must be terminated as soon as possible and continuity of relationships must be guaranteed. The law achieves the former to a large extent via limitations on the liability to maintain and the emphasis on immediate division of matrimonial property. Custody of the children is invariably arranged by agreement. When the matter does go to court for resolution, the placement is made in the best interests of the child as ascertained by an independent solicitor acting for the child. The final arrangement regarding custody/access should reflect the child's needs for development with both parents. To allow these needs to be overlooked and to deny the non-custodial parent, who still may be a psychological parent, the opportunity for an ongoing relationship with the child, because a step-parent wants to adopt their stepchild, is to put a blemish on the system that the law has developed to perform a simple role.

If adoptions by step-parents were abolished, effect could be given to the original placement and stress could be taken out of the step-parent-stepchild relationship. There are other means of achieving the legal effects of adoption, but adoption is not the way to achieve the psychological aspects of natural parentage in the stepfamily situation.

The problem lies really in the fact that society, oriented towards first marriages, provides little guidance on problems

peculiar to remarriage, and, in particular, the role of the step-parent. Step-parents after divorce must be made to realise that they do not replace the Kin from the first marriage as they do in a remarriage after widowhood. Rather they add to existing Kin. They must be made to accept this and the fact that child development requires relationships with psychological parents, making adoption only a potential aggravation to the step-parent-stepchild relationship in the reconstituted family.

The law performs a lot better in relation to the second most pressing problem in the stepfamily - financial matters. In the past, there has been no statutory guideline for balancing the financial obligations of husbands or wives to their spouses and children from current and previous marriages. There is still no explicit guideline but the priorities between the families have been settled. The current (second) family will take priority in a competing claim for the remarried spouse's income - members of that family are entitled to a reasonable standard of living.

The obligations to a first family will be transitory so that step-parents will be able to concentrate all their economic and emotional resources on getting a return out of the second family. There is no substitute for hardwork in this family and the law attempts to ensure that the remarried spouse does not have to spread his or her efforts any wider than necessary.

Maintenance for recipient is potentially a vital means of support given the probability of the value of the matrimonial property being small. This is not the case in practice.

70% of maintenance orders in 1979 were under \$40 per week. Over 70% of maintenance orders went to the wife only or the wife and children in that year. When this is coupled with the fact that under half of the applications for maintenance resulted in orders²¹⁰, the picture emerges of many women suffering severe material deprivation after dissolution. They will not share in the "career assets" and are only recently starting to take a share of the future benefits of superannuation schemes. A hypothesis looking something like the following springs immediately to mind:

The financial difficulties following dissolution force many women to remarry.

Greater recognition of the financial difficulties faced by women in particular, after dissolution, is needed by the law. Suggestions as to revision of the matrimonial law have been suggested, but closer attention must be paid to the needs, means of support and ability to earn of women immediately after separation. Sexual equality has not yet resulted in financial equality.

If women are being forced into remarriage, they are unlikely to be able to choose so as to avoid the mistakes they made last time. The ability to form a primary group is going to be affected. The integration of the family is likely to suffer. Any expressed desire to constitute a "normal" family will be unrealisable because the added pressures and stresses within the family will make the effort required to raise the quality of relationships to excellent, unattainable. The high redivorce rate testifies to many parties not being

willing or able to put that extra effort in.

The aim of the law should be to create a situation in which the members of the reconstituted family can spend time to work out the roles each is to play in the "new family" and the importance of ties to parties outside the family (geographically rather than biologically). The parties will be able to concentrate on the relationships involved and with the help of skilled social workers reap the many and undisputed rewards of marriage.

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YEAR	NO. OF REMARRIAGES	% OF ALL MARRIAGES
1960-1964	18,213	15.4
1965-1969	18,600	14.2
1970	4,127	15.9
1971	4,395	16.
1972	4,358	17.0
1973	4,848	18.5
1974	5,065	19.9
1975	5,187	21.2
1980	5,407	23.5

In a sample of 1,000 marriages in 1961, 25.4% involved a divorce. This gives an indication of the size of the phenomenon and how imperative research on the topic is.

Footnotes

- ¹ Duberman, L, *The Reconstituted Family: A Study of Remarried Couples and their Children*, 1975
- ² This term will be used interchangeably with "stepfamily" throughout this paper.
- ³ These groups are characterised by frequent intimate face to face interaction in which there exists feelings of love and sympathy tempered by competition and hostility. They are primary because they are the first groups in which people experience social unity. For a fuller discussion of the term, see Lee, S C, *The Primary Group as Cooley Defines It*, Soc Q, 1964, 23-24.
- ⁴ "Divorce" will probably remain in common usage. However, the noun "divorce" will be replaced by "dissolution" in this paper. The adjective "divorced" will not be replaced by "dissolved" for obvious reasons.
- ⁵ In 1980, there were 5407 remarriages of divorced men and women compared with 1316 remarriages of people whose marriages were terminated by death - 1980 Vital Statistics, Department of Statistics.
- ⁶ The greater numbers and the younger ages of the divorced than widowed people who are remarrying makes their remarriage patterns of more social and demographic importance. Moreover, even if their size and age compositions were similar, it would not follow that their remarriage patterns would also be similar. The factors that cause re-entry into the marriage market are completely different: widowhood is an involuntary status; prospective remarriage is frequently a reason for divorce.
- ⁷ Recent trends in remarriages indicate that they are increasing in number steadily and comprise an increasing proportion of all remarriage.

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⁸ Bernard, J, *Remarriage: A Study of Marriage*, 1956, page 76.

⁹ Willoughby, R R, "The Relationship to Emotionality of Age, Sex, and Conjugal Condition", *American Journal of Sociology* (1938) 43, page 923.

^{9a} More will be said about this marriage later in the paper.

¹⁰ DEATH RATE: Age Specific Rates per 10,000 of Population at Ages:

	Under 5	5-14	15-24	25-44	45-64	Over 65
Males	44.1	4.8	16.9	17.3	127.9	741.9
Females	32.7	2.4	5.6	10.7	68.0	552.5
Both	38.5	3.6	11.4	14.1	97.8	632.9

Source: *New Zealand Official Yearbook*, 1981, page 98.

¹¹ Bernard, op. cit., page 77

¹² Patterson, S, *Divorce in New Zealand: A Statistical Study for the Department of Justice* 1976.

¹³ Ibid, page 22

¹⁴ Ibid, page 29

¹⁵ A sociologist defines neuroticism as the inability of a person to define his roles adequately or to correct his role performance in terms of the conception of himself reflected back from others. The neurotic has little skill in interpreting the image of himself or herself reflected back to him from those in his environment. He will, therefore, be likely to use unrealistic and ineffectual methods of handling emotional problems.

¹⁶ Bernard, op. cit., 106.

¹⁷ Bernard (Ibid) originally listed five categories of forces that selected people into remarriage but have been reclassified into three categories by the writer because of overlap in those initial categories.

¹⁸ In the USA in 1970 over three-quarters of the women who divorced when under 30 years of age eventually remarried. 1970 National Fertility Survey undertaken by the Department of Health, Education and Welfare, 1957.

- ¹⁹ Included in the following sections are responses from a series of interviews conducted by the writer with seven remarried women and two remarried men. The interviewer did not have the benefit of a taperecorder so that responses do not appear as direct quotes.
- ²⁰ Status is measured by occupation at the time of marriage and is categorised into six general classes:
1. professional/technical/managers
 2. sales/clerical
 3. craftsmen
 4. operatives/service workers
 5. farmers
 6. labourers
- ²¹ Mueller, C W, and Pope, H, "Divorce and Female Remarriage Mobility: Data on Marriage Matches after Divorce for White Women", *Social Forces*, Volume 58:3, March 1980, 726.
- ²² Bergler, E, *Conflict in Marriage*, page 151.
- ²³ This refers to the period between the legal dissolution and remarriage.
- ²⁴ Department of Statistice (NZ) 1980 Vital Statistics. (1981 statistics were not available yet.)
- ²⁵ Hart, N, *When Marriage Ends: A Study in Status Passage*, London, 1976.
- ²⁶ Ibid, page 163.
- ²⁷ "Time" - if one has young children, a father or mother alone will have little opportunity to leave the house. Care for such children is a full-time occupation.
- "Money" - there may be reduced material circumstances post-dissolution (infra).
- ²⁸ As will be explained later, the stigma that used to be attached to the divorcee (male and female) has largely been eliminated. However, the Hart study (supra note 25) and my respondents stated that they were still stigmatised - particularly the women. Such an unfavourable image of the divorcee cannot be disregarded as an obstacle to establishing a stable relationship.
- ²⁹ 1980 Vital Statistics: Department of Statistics.

³⁰ A sample of 1000 marriages in 1981 was taken by the writer out of a population of approximately 21,000 marriages in New Zealand. The sample was randomly selected and the results were expected:

1. to update the 1980 figures,
2. to provide a means for comparison of New Zealand remarriage statistics with those of the British where the New Zealand statistics were not available in published form.

³¹ 1980 Vital Statistics.

³² Idem.

³³ Leete, R, *Changing Patterns of Family Formation and Dissolution in England and Wales 1964-1976*, for the Office of Population Censuses and Surveys, page 41.

³⁴ Ibid, page 44.

³⁵ Bernard, op. cit., 142-147.

³⁶ 1981 sample results.

³⁷ Leete, op. cit., 50

³⁸ Ibid, 51.

³⁹ Webb, P, *Review of Matrimonial Law*, 1977, Wellington.

⁴⁰ Patterson, op. cit., 24.

⁴¹ Supra, page 12.

⁴² Bernard, op. cit., 144

⁴³ 1980 Vital Statistics, Department of Statistics.

⁴⁴ Thornton, A, *Decomposing the Remarriage Process*, Population Studies, July 1977, 383.

⁴⁵ S.43, Family Proceedings Act, 1980 (FPA)

⁴⁶ Lloyd, J, "Marital Breakdown" in *Families in New Zealand Society*, 1979

- ⁴⁷ This expression simply means actual breakdown regardless of who is in the right or who is in the wrong.
- ⁴⁸ Phillips, R, *Divorce in New Zealand: A Social History*, 45-47.
- ⁴⁹ For example, desertion, separation agreements, judicial separation, habitual drunkenness, and failure to comply with a decree for restitution of conjugal rights.
- ⁵⁰ Inglis, B D, *Family Law*, 1968, Wellington.
- ⁵¹ S.39(1) FPA, 1980.
- ⁵² S.39(2) and s.39(4) FPA, 1980.
- ⁵³ Over 1200 submissions were received.
- ⁵⁴ 1980, *New Zealand Parliamentary Debates*, 5105.
- ⁵⁵ Idem.
- ⁵⁶ "Change" here refers to the change over the last twenty years rather than just the change brought about by the FPA 1980.
- ⁵⁷ The decreased age difference between bride and groom suggests that these companionship marriages are replacing the traditional marriage. The average age at first marriage for men in 1980 was 23.08 and 22.71 for women. This is in contrast to 26.32 for men and 23.10 for women in 1959.
- ⁵⁸ Lloyd, op. cit., 87.
- ⁵⁹ S.8(1)9(a) FPA 1980.
- ⁶⁰ S.8(1) (b) FPA 1980
- ⁶¹ Wellington District Law Society Memo dated 17 August 1977.
- ⁶² Idem
- ⁶³ The Law Society felt that the effect of S.13 was
- (a) A Solicitor must seriously explore the possibility of reconciliation.
 - (b) A solicitor must advise his client that the client must make a serious effort towards reconciliation.
- (continued)

(c) A solicitor should conduct himself in proceedings bearing in mind the possibility of reconciliation.

(d) A solicitor must conduct himself so as not to discourage amicable settlement of the parties' differences.

⁶⁴ A small sample of Wellington lawyers was selected and interviewed on their attitude and approach to the duty in s.8 FPA. The findings were in no way representative of all family lawyers' views but were indicative of a negative approach taken to s.8 FPA 1980.

⁶⁵ These comments were made in relation to the introduction of no-fault divorce laws in California - the first American State to do so - see Weitzman, L, "The Economics of Divorce" (1981) 28 *UCLA Law Review*, 1181. They are, however, of general application to any system with such divorce legislation, including New Zealand.

⁶⁶ Justice Department Statistics, 1980.

⁶⁷ Such data are not available in New Zealand but in relation to the low economic status of those divorcing. See Patterson, *op. cit.*, page 29, where she states that divorce promoting characteristics include

- declining socio-economic status,
- a non-working wife,
- a husband in a manual occupation

Also see Bernard, *op. cit.*, page 82, and Weitzman, *op. cit.*, page 1188.

⁶⁸ Weitzman, *op. cit.* 1192.

⁶⁹ Finlay, A M, ex-Minister of Justice. *Matrimonial Property: Comparable Sharing* 1975, Government Printer, page 5.

⁷⁰ Henceforth referred to as the MPA.

⁷¹ Davey, J A, and Atkin, W R, *Housing and the Matrimonial Property Act*, 1976, December 1980. Research Paper for the National Housing Commission.

⁷² Defined in s.8 MPA.

⁷³ Defined in s.9 MPA.

⁷⁴ S.8(a) and (b) MPA.

⁷⁵ S.12 MPA

- ⁷⁶ S.13 MPA
- ⁷⁷ S.14 MPA
- ⁷⁸ S.15 MPA
- ⁷⁹ *Infra* 42
- ⁸⁰ Weitzman, op. cit., page 1260.
- ⁸¹ Wallerstein, J, and Kelly, J, *Surviving the Break-up: How Children and Friends Cope with Divorce*, 1980.
- ⁸² Davey, op. cit., page 14.
- ⁸³ Idem.
- ⁸⁴ Ibid, page 15.
- ⁸⁵ S.33(3) (a) MPA
- ⁸⁶ S.27 MPA
- ⁸⁷ Davey, op. cit., 16.
- ⁸⁸ Ibid., 26
- ⁸⁹ Doak v Turner [1981] 1 NZLR 18 @ 23.
- ⁹⁰ Idem.
- ⁹¹ Idem.
- ⁹² Rountree v Rountree (1977) MPC 187.
- ⁹³ Weitzman, op. cit., 1266.
- ⁹⁴ Ibid, 1211. He states that these career assets could include a number of items of value such as the value of an education or training, job experience, seniority at a particular company or in an industry, the ability to earn a specific salary, insurance cover for accidents, illness, hospitalisation, and disability, and the goodwill value of a professional practice or business.

- ⁹⁵ S.12 MPA
- ⁹⁶ Davey, op. cit., 49-50.
- ⁹⁷ Morton v Morton CA 146/81, 10 August 1982
- ^{97a} S.8(i) MPA 1976.
- ^{97b} Van Bohemen, G T, *Superannuation Schemes and the Matrimonial Property Act 1976*, 1980, NZULR, 63.
- ^{97c} Chilwell, J, in Y v Y [1977] 2 NZLR, 385, 403
- ^{97d} See Y v Y Ibid, Edwards v Edwards (1977) IMPC, 67, and Allen v Allen (1980) 4 MPC 1.
- ^{97e} Haldane v Haldane [1981] 1 NZLR, 554.
- ⁹⁸ Atkin, W R, *Spousal Maintenance: A New Philosophy?* NZULR, Vol 9, No 4, December 1981, 336.
- ⁹⁹ [1979] AC 593, 608.
- ¹⁰⁰ [1978] 1 NZLR, 628.
- ¹⁰¹ Atkin, op. cit., 338.
- ¹⁰² [1980] 2 NZLR 247, 255-256.
- ¹⁰³ Atkin, op. cit. 338.
- ¹⁰⁴ S.63(1) (a) FPA.
- ¹⁰⁵ S.63(1) (b) FPA.
- ¹⁰⁶ S.63(1) (c) FPA.
- ¹⁰⁷ S.63(1) (d) FPA.
- ¹⁰⁸ S.63(1) (e) FPA.
- ¹⁰⁹ S64(1) (a) to (c) FPA.

- ¹¹⁰ Atkin, op. cit., 344-345.
- ¹¹¹ S.64(2) FPA
- ¹¹² S.65(3) FPA
- ¹¹³ Lyne v Lyne [1951] NZLR 287
- ¹¹⁴ [1972] NZLR 184
- ¹¹⁵ Gaspar v Gaspar [1972] NZLR 174
- ¹¹⁶ [1976] 1 NZLR 667, 671
- ¹¹⁷ See Bernard, op. cit. 190-192 for a discussion of the means of achieving marital solidarity.
- ¹¹⁸ S.65(3) FPA
- ¹¹⁹ Atkin, op. cit., 345
- ¹²⁰ S.65(2) FPA
- ¹²¹ Duberman, op. cit., 40
- ¹²² This was felt by respondents in several interviews and see Walker, K N, Rogers, J and Messinger, L, *Remarriage After Divorce: A Review*. Social Casework, 1977, May, Vol 58, No 5, 276, 281-282.
- ¹²³ This was supported by respondents. See also Bernard, op. cit. 191.
- ¹²⁴ S.65(1)(c) FPA
- ¹²⁵ S.84A Social Security Act 1964 (SSA)
- ¹²⁶ [1979] 2 NZLR 245
- ¹²⁷ Ss 27I to 27ZI Social Security Act 1964 as inserted by the 1980 Social Security Amendment Act.
- ¹²⁸ Twentieth Schedule SSA paragraph 2.

- ¹²⁹ This is simply because the extra allowable expenses for dependents of the liable parent will exceed his after tax income unless he earns well above the average wage.
- ¹³⁰ Atkin W R, *Liabile Parents: The New State Role in Ordering Maintenance*, 1981, Otago Law Review, Volume 5.
- ¹³¹ Brill, B, Reporting back from the Statutes Revision Committee, Journal of the House of Representatives, 1980, 2554.
- ¹³² The first review of the amounts has just been undertaken - Social Security Amendment Act 1982 - for the first time since the scheme was introduced two years ago.
- ¹³³ One family lawyer's opinion of the former system.
- ¹³⁴ See, for example, Weitzman, *op. cit.*, 1257.
- ¹³⁵ S.110, FPA 1980
- ¹³⁶ S.111, FPA 1980
- ¹³⁷ S.112, FPA 1980
- ¹³⁸ Chambers D, *Making Fathers Pay*, 1979, 90
- ¹³⁹ S.16(2)(a) Adoption Act 1955
- ¹⁴⁰ Social Welfare Department Annual Reports 1980, 1981
- ¹⁴¹ S.16(2)(i) Adoption Act 1955
- ¹⁴² Maddox, B, *The Half Parent: Living with Other People's Children*, 206
- ¹⁴³ Webb, P, *A Review of the Law of Adoption* for the Department of Justice, Wellington, 1979, 16.
- ¹⁴⁴ Maddox, *op. cit.*, 204
- ¹⁴⁵ Webb, *op. cit.*, 18
- ¹⁴⁶ The issue of a questioning of the conscience of a step-parent has been dealt with by Maddox, *op. cit.*, Ch. 19.

^{146 a} S.23(2) Guardianship Act 1968

¹⁴⁷ They need not necessarily be husband and wife, see S.13(1)(a) and (b) FPA 1980.

¹⁴⁸ Scaletta, D I, *Divorce Courts and Conciliation Services and the Interface of Law and the Social Sciences*, 11, Man, L J 321, 328

¹⁴⁹ Northrop, "The Mediatlional Approval Theory", 44 *Virginia Law Review*, 351.

¹⁵⁰ By June 1982, there had been only four cases of a defended custody hearing out of over 80 applications for a custody order.

¹⁵¹ Other sections under which a child's representative can be appointed are s.162 FPA 1980, s.26 MPA 1979, and s.29 Children and Young Persons Act 1974.

¹⁵² Gendall, J W, "Counsel for Children", in *Lawyers for Children*, 1979 Department of University Extension, VUW, page 20.

¹⁵³ Walker, K N, et al, op. cit., 278

¹⁵⁴ S.20A Guardianship Act 1968 - Every person who hinders or prevents access

(a) without reasonable excuse,

(b) with intent to prevent access to a child by a person who is entitled under the court to access to a child,

will be liable to a fine not exceeding \$1000.

¹⁵⁵ Johnston, I D, *Shared Custody after Parental Separation*, 1982, NZLJ, 8

^{156a} Ibid, 10

¹⁵⁶ Ahrons, *The Co-parental Divorce: Preliminary Research Findings and Policy Implications*, 13 (unpublished paper, National Council on Family Relations, Philadelphia, 1978.

¹⁵⁷ Visher and Visher (*Stepfamilies: A Guide to Working with Step-parents and Stepchildren*, 1979, New York) illustrate this complexity by contrasting a nuclear family structure with a reconstituted family structure and indicating the possible number of two person interactions and all-person interactions which include all possible groups of three, four, five, etc. In the nuclear family they calculate there are 28 pair interactions and 247 all person interactions. In the reconstituted family there are 253 pair interactions and 8,388,584 all person interactions.

- ¹⁵⁸ Supra 1
- ¹⁵⁹ Infra 70
- ¹⁶⁰ Whitney, R, *Reconstituted Families: Forged in the Furnace of Conflict*. A paper for the Newtown Child and Family Clinic, 1982, 5-11.
- ¹⁶¹ See Bittermann, C M, *The Multi-Marriage Family*, Social Casework, 1968, Volume 49, No 4, 220.
- ¹⁶² Cherlin A, "Remarriage as an Incomplete Institution", *American Journal of Sociology*, 1978, Vol 84, No 3, 634, 637-640.
- ¹⁶³ Lichtenberger, J P, *Divorce: A Social Interpretation*, 1972
- ¹⁶⁴ Bittermann, op. cit., 219.
- ¹⁶⁵ Duberman, op. cit., (Supra, note 1)
- ¹⁶⁶ Ibid, 40
- ¹⁶⁷ Ibid, 42
- ¹⁶⁸ Ibid, 44
- ¹⁶⁹ Divorced people remarry within approximately 2-3 years of the legal dissolution. Widowed tend to wait at least five years. Source: 1980 Vital Statistics.
- ¹⁷⁰ Duberman, op. cit., 46
- ¹⁷¹ Ibid, 47
- ¹⁷² Langner and Michael, *Life, Stress and Mental Health*, 169-171, and Rosenberg, *Society and the Adolescent Self-Image*, 85-88.
- ¹⁷³ Burchinal, L G, "Characteristics of Adolescents from Unbroken, Broken and Reconstituted Families", *Journal of Marriage and the Family*, 1964, Vol 26, 44-51
- ¹⁷⁴ Social Development Council, *Stepfamilies: Families in Special Circumstances*, October 1978, 4

- ¹⁷⁵ Bittermann, *op. cit.*, 220
- ¹⁷⁶ Social Development Council, *op. cit.*, 5
- ¹⁷⁷ Ibid, 4
- ¹⁷⁸ He is the Director of the Crisis Centre, Kings Cross, in Sydney.
- ¹⁷⁹ Social Development Council, op. cit., 6
- ¹⁸⁰ See, for example, Duberman, op. cit., 50; Bernard, op. cit., 153
- ¹⁸¹ See Cherlin, *op. cit.*, 644, and Schwartz, A C, *Reflections on Divorce and Remarriage*, *Social Casework*, April 1968, Vol 49, No 4, 213, 216.
- ¹⁸² S.130 Crimes Act defines incest as sexual intercourse between
- (a) Parent and Child
 - (b) Sister and Brother
- These refer to "blood" ties between the two parties but what if the parties are step-parent and stepchild with no blood relationship? The statute is unclear on this.
- ¹⁸³ Duberman, op. cit., 55-65
- ¹⁸⁴ Whiteside, M F, and Auerbach, L S, "Can the Daughter of my Father's New Wife be my Sister? Families of Remarriages in Family Therapy", *Journal of Divorce*, 1978, Vol 1, Part 3, 271, 276-279.
- ¹⁸⁵ Duberman, op. cit., 74-75.
- ¹⁸⁶ *Idem*
- ¹⁸⁷ *Idem*
- ¹⁸⁸ Social Development Council, *op. cit.*, 5
- ¹⁸⁹ Bernard, op. cit., Chapter 11
- ¹⁹⁰ See Hart, *op. cit.*, 180-184, Duberman, op. cit., page 6
- ¹⁹¹ Social Development Council, op. cit., p 6

- ¹⁹² These were the views of some of the respondents in the interviews. See also Duberman's, op. cit., comments at pages 117-120 regarding the relationship between the step-parent and the ex-spouse.
- ¹⁹³ The traditional family is monogamous and permanent. It is a nuclear family, consisting of the breadwinner husband, homemaker wife, and their children; the family lives apart from any other relatives.
- ¹⁹⁴ Duberman, op. cit., 130
- ¹⁹⁵ This was stressed in an interview with one of the female respondents.
- ¹⁹⁶ Duberman, op. cit., 133
- ¹⁹⁷ See, for example, Patterson, op. cit.; Bernard, op. cit., and in particular Monahan T P, "How Stable are Remarriages?" *American Journal of Sociology*, Vol 58: 280, 287, and Dublin, C I, Spiegelman, M, *The Facts of Life from Birth to Death*, New York, 1951, page 70.
- ¹⁹⁸ Glenn, N, and Weaver, C N, "The Marital Happiness of Remarried Divorced Persons", *Journal of Marriage and the Family*, 1977, May, 331
- ¹⁹⁹ Ibid, 335
- ²⁰⁰ 1980, Vital Statistics, Department of Statistics
- ²⁰¹ Justice Department Statistics, 1981
- ²⁰² Patterson, op. cit., 28
- ²⁰³ Idem
- ²⁰⁴ Ibid, 29
- ²⁰⁵ For a full discussion on the requirements of a successful marriage, see Bernard, op. cit. and, in particular, Chapter 8 on Establishing Dynamic Equilibrium.
- ²⁰⁶ This section will contain responses from interviews in conjunction with material from Westoff, L A, *The Second Time Around: Remarriage in America*, Chapter 6 - The Rewards of Remarriage, 121-142. This book provides a journalistic inquiry rather than a sociological one. For every generalisation there will be exceptions rather than empirically tested hypotheses.

- ²⁰⁷ Ibid, 132. Also Bernard, op. cit., has two comprehensive chapters on success and the rewards of remarriage. See Chapters 11 and 12.
- ²⁰⁸ This is perhaps the most critical factor in whether the remarriage will be a success rather than a reward from it. However it will in turn lead to the reaping of the rewards listed above.
- ²⁰⁹ Goldstein, J, Freund, A, Solnit, A J, *Before the Best Interests of the Child*, 5-8.
- ²¹⁰ Justice Department Statistics, 1979.

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