

F W Guest Memorial Lecture 1993

VIOLENCE AND WATER WOMEN'S ISSUES, AND THE LAW

THE HONOURABLE SILVIA CARTWRIGHT*

Francis William Guest, MA, LL.M., was the first Professor of Law and the first full-time Dean of the Faculty of Law in the University of Otago, serving from 1959 until his death in 1967. As a memorial to Professor Guest a public lecture is delivered each year upon an aspect of law or some related topic.

It is a privilege and an honour to follow in the steps of so many of New Zealand's foremost jurists and lawyers to deliver the Frank Guest Memorial lecture this year. It is also a time of personal reminiscence for me. I was one of Professor Guest's last students; he died just before my graduation. His love of the law and his support of his students were greatly valued by those of us fortunate enough to be in the Faculty when he was Dean. His treatment of me, an almost totally isolated female student, was fair handed and encouraging. For that, I have much gratitude.

INTRODUCTION

To be a woman in 1993, this year of celebration of one hundred years of women's suffrage in New Zealand, is to ride a roller coaster of pride, pleasure and petty humiliation.

Although the year is not yet half over, increasingly there is adverse comment about special features on radio and television and a resounding silence on issues that will promote real change for women. In 1994, when we reflect on this year, will gains have been made for women? If our record for improving women's human rights is any measure, then there will have been one step forward, and at best, only minor slippage.

1993 also means the doubling of the work load for any woman remotely interested in women's suffrage or feminism. Naturally we must take responsibility for organising the celebrations, speaking at the symposia, painting the pictures, writing the books and film scripts. While it might be said that 1993 is a well deserved year off for men, who have had to slave at all those activities for centuries with very little help from women, the reality is that this year provides a unique opportunity to focus attention on important issues for women, and to provide a stage for discussing those issues with the whole community.

And what of the law, women's role in its practice and its application to women? I suggest that women's legal rights and responsibilities as vic-

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tims, as litigants, and as practitioners demand careful scrutiny. Generations of legal thought have been devoted to and by those who have been dominant in the legal culture: the men.

Gradually we are beginning to understand that a male view is not all encompassing. No matter that generally speaking male legal scholarship and judicial thought has been benign, unconsciously its focus has been on what those scholars and judges knew best: the male view of life. Women have stood on the edges of the spotlight, just out of focus, often protected, but rarely included. Although their needs as victims and consumers of the law are beginning to be identified, my concern is for the development of a feminist jurisprudence, one which will complement and illuminate the work done over centuries of legal thought.

There are women legal scholars and academics who will achieve that development with skill and grace. For my part, I want to discuss tonight two broad topics that demand scholarly attention.

Violence

In 1985, during the United Nations mid-decade conference for women, hundreds of women gathered in Nairobi from all parts of the globe. The topics which all considered to be most pressing for women were violence and water.

Violence against women is a multifaceted problem. It affects many aspects of a woman's life. As Georgina Ashworth says:

"The greatest restriction of liberty, dignity and movement, and at the same time, direct violation of the person is the threat and realisation of violence . . . However violence against the female sex, on a scale which far exceeds the list of Amnesty International victims, is tolerated publicly; indeed some acts of violation are not crimes in law, others are legitimized in custom or court opinion, and most are blamed on the victims themselves."¹

As women increasingly came to appreciate the fact that gender-based violence is a global problem, they have nationally and internationally devised many different strategies to confront governments and communities which permit such offending. Although "Violence has been on the international women's agenda for many years",² international studies, particularly those undertaken by the United Nations, have disclosed that violence against women "as an ordinary form of behaviour, may be becoming more public, common and frequent",³ and that such abuses are "rampan, violent, dehumanising and occur throughout the world".⁴

1 Center for Women's Global Leadership. *Gender Violence: A Development and Human Rights Issue*. Charlotte Bunch and Roxanna Carrillo, 7.

2 Justice Elizabeth Evatt, President, Australian Law Commission.

3 1988 Report for the Commission on the Status of Women on Efforts to Eradicate Violence Against Women within the Family and Society; Report of Secretary General E/CN.6/1988/6.

4 International League for Human Rights: *Human Rights Abuses Against Women - A Worldwide Survey*. A Compilation of Excerpts from the US State Department's 1990 Country Reports on Human Rights (1990).

To be female in any country in the world is to face daily the risk of injury or death. Before birth, amniocentesis is used to screen for the female foetus, leading to abortion rates as high as 99 percent in Bombay, India. Some countries are beginning to report huge population imbalances, with thousands more male than female births occurring.

The World Health Organisation reports that during childhood, girls are fed less, breastfed for shorter periods, taken to doctors less frequently, and die or are physically maimed by malnutrition at higher rates than boys.⁵ In a recent United Nations' publication a photo was featured of a woman whose head was bowed sorrowfully over her infant twins. The boy, being breastfed, was healthy and plump. The girl, a tiny wizened human being destined to die the next day, was being bottle fed at the mother-in-law's insistence.

Abuses against women around the world include acid attacks, dowry deaths, bride burning, forced labour and prostitution, and torture. Sex tourism has become more publicly an issue over recent months as the Thai government discloses the extent of forced prostitution of young girls and women employed to gratify male tourists, including men from New Zealand. Brides have been imported to this country, if not against the will of the women, then at best, because they saw no other economic choices for themselves in their country of birth.

Female circumcision is practised in many countries, particularly Africa. Its practice will usually be illegal, but there are few if any attempts made to stamp out a custom which has mutilated and killed many thousands of women, wrecked their health and made them and their children more susceptible to contracting disease, including HIV/AIDS.⁶

Perhaps the most compelling recent examples of violence against women are described in the newspapers and flicker across our television screens as the war in the former Yugoslavia proceeds. The United Nations has sought a report from a Special Rapporteur on the situation of Human Rights in the territory of the former Yugoslavia. In his report to the Economic and Social Council, Mr Tadeusz Mazowiecki says:

"In particular, the Special Rapporteur would like to emphasize the following from among their conclusions:

"Rape of women, including minors, has occurred on a large scale. While the team of experts has found victims among all ethnic groups involved in the conflict, the majority of rapes that they [the team of experts] have documented had been committed by Serb forces against Muslim women from Bosnia and Herzegovina. The team of experts is not aware of any attempts by those in positions of power, either military or political, to stop the rapes.

"There is clear evidence that Croat, Muslim and Serb women have been detained for extended periods of time and systematically raped. In Bosnia and Herzegovina and in Croatia, rape has been used as an instrument of ethnic cleansing.

5 *Gender Violence: A Development and Human Rights Issue*. Bunch and Carrillo, Center for Women's Global Leadership, 6.

6 For a graphic description of the consequences of female circumcision, see "More" magazine, April 1993, 54.

“Rape is an abuse of power and control in which the rapist seeks to humiliate, shame, degrade and terrify the victim. . . . rape has been used not only as an attack on the individual victim, but is intended to humiliate, shame, degrade and terrify the entire ethnic group. There are reliable reports of public rapes, for example, in front of a whole village, designed to terrorize the population and force ethnic groups to flee.”⁷

Following representations particularly by women’s non-governmental organisations and by United Nations bodies such as the committee monitoring compliance with The Convention to Eliminate All Forms of Discrimination against Women, and the Division for the Advancement of Women, the Special Rapporteur made the following recommendation:

“Article 27, paragraph 2, of the Fourth Geneva Convention states: ‘Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault.’ Rape in this context is a grave breach of the Fourth Geneva Convention (art. 147) and as such, a war crime (Additional Protocol I).”⁸

The fact that it was necessary to state specifically that rape is a war crime, demonstrates vividly how slow is the change in attitude to such crimes against women. Rape, enforced prostitution and similar crimes against women have not, in past conflagrations, been considered worthy of separate consideration. They have been a tragic element of most wars, but not labelled *war crimes*, almost as if they are an expected consequence of war along with looting and the general misdemeanours inflicted upon a civilian population which has the misfortune to be overrun by an enemy.

Common to all these crimes against women is the fact that although usually classified as offences either in the domestic law or under the international conventions, such as the Geneva Convention, the fact remains that frequently the authorities do not pursue the offenders, discipline the “soldiers”, try, and punish the perpetrators.

There is a certain dissonance in the administration of law in any country. While the statutory provisions may prohibit an offence, it is not uncommon for society to turn a blind eye to the enforcement of the law. Bride burning and the murder of female infants is illegal, and yet it occurs in some countries and the perpetrators are not arrested or charged.

So too is female circumcision illegal but, if not officially tolerated, is at least not actively discouraged by the Criminal Justice systems of some nations. It seems that although a society in regulating itself will usually have in place the necessary rules, it does not always, deep down, believe that such laws are essential to regulate the community.

Derision has been heaped on a few Australian judges who have articulated views of women’s attitudes to rape implying that the offences committed were pleasurable or at least acceptable to the victims. Those views

7 Report of Special Rapporteur to United Nations Economic and Social Council. E/CN.4/1993/50, 19.

8 Ibid at 20.

are, however, firmly entrenched in our culture. In the nineteenth century Lord Byron wrote:

“A little still she strove, and much repented,
And whispering ‘I will ne’er consent’ – consented.”⁹

Rape and assault of women has always been a crime; but equally there has persisted a belief either that women do not seriously object, or that they are so undervalued as members of the human race that crimes committed against them have less significance. Perhaps the true indication of the degree of civilisation that a society has achieved can be measured not simply by the laws it passes but by the laws that it enforces.

How seriously should our society regard gender-based violence? It seems to me that unequivocally it should be classed as more critical to the good governance and the general welfare of the people than many of the more minor regulatory offences. It should be regulated both formally by the enactment of the appropriate legislation and by active enforcement and discouragement of such offending.

Elevating gender-based violence to a more rarefied atmosphere may encourage society to treat it seriously. Violence against one segment of the community is a grave matter. In the former Yugoslavia it is called “Ethnic Cleansing”. In New Zealand, where approximately 40 percent of murders are “domestic related” and invariably perpetrated against women, there is a crying need for all of us to protest and to label these actions not just as crimes, but also as a violation of women’s human rights.

Certain rights are so basic that we rarely consider their genesis. New Zealand has affirmed its commitment to the:

Right not to be deprived of life – No one shall be deprived of life except on such grounds as are established by law and are consistent with the principles of fundamental justice.

Right not to be subjected to torture or cruel treatment – Everyone has the right not to be subjected to torture or to cruel, degrading, or disproportionately severe treatment or punishment.¹⁰

Those sections were enacted at least in part to comply with obligations assumed when ratifying the International Convention on Civil and Political Rights.¹¹

The United Nations Convention to Eliminate all Forms of Discrimination Against Women approved for ratification by the United Nations in 1979 makes no explicit reference to violence against women among its

9 Don Juan.

10 New Zealand Bill of Rights Act 1990, sections 8 and 9.

11 Article 6 – Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

Articles. Consequently CEDAW has recommended that States parties reporting to the monitoring Committee:

1. include information about the legislation in force to protect women against the incidence of all kinds of violence in everyday life (including sexual violence, abuses in the family, and sexual harassment at the work place),
2. other measures adopted to eradicate this violence,
3. the existence of support services for women who are the victims of aggression or abuses, and
4. statistical data on the incidence of violence of all kinds against women and on women who are the victims of violence.

It is hoped that by insisting that this information be provided, the enormous and international problem of gender based violence will be highlighted. In addition, the Committee drafted "General Recommendation 19: Violence Against Women", a recommendation recently affirmed by the Economic and Social Council for adoption by the United Nations General Assembly.

The Recommendation sets out in some detail the many forms of violence experienced by women, and the impact that these actions have on women and on their ability to live free of the physical, and emotional consequences of violence, and to enjoy good health and standards of living. The Recommendation referred in particular to violence as an issue of human rights:

"General Comments:

7. Gender-based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, is discrimination within the meaning of article 1 of the Convention. These rights and freedoms include:
 - (a) The right to life;
 - (b) The right not to be subject to torture or to cruel, inhuman or degrading treatment or punishment;
 - (c) The right to equal protection according to humanitarian norms in time of international armed conflict;
 - (d) The right to liberty and security of person;
 - (e) The right to equal protection under the law;
 - (f) The right to equality in the family;
 - (g) The right to the highest standard attainable of physical and mental health;
 - (h) The right to just and favourable conditions of work.
8. The Convention applies to violence perpetrated by public authorities. Such acts of violence may breach that State's obligations under general international human rights law and under other conventions, in addition to breaching this convention.
9. It is emphasised, however, that discrimination under the Convention is not restricted to action by or on behalf of Governments (see articles 2(e), 2(f) and 5). For example, under article 2(e) the Convention calls on States parties to take all appropriate measures to eliminate discrimination against women by any person, organisation or enterprise. Under general international law and specific human rights covenants, States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation."

Around the world there are many different forms of violence against women. Many are horrifying to New Zealanders, both Maori and Pakeha

who are so Westernised in their culture. Reports of female circumcision affecting millions of young girls and women, of bride burning and dowry deaths can lead to a feeling of complacency that such barbaric practices would not be permitted here.

But gender-based violence is as great a problem in New Zealand as it is in any Islamic, Asian or African country. Our culture acquiesces in such violence and only comparatively recently has our law begun to adapt to ensure that the clear public message is that violence against women is a crime, is unacceptable and will be punished.

In its report to CEDAW *Status of New Zealand Women 1992*, the New Zealand Government says:

“The main difficulty in getting redress for women in this area (charging the abuser with assault) in the past was Police and community perceptions that domestic assaults are not as real or important as other forms of assault.”

The fact that trial court convictions for sexual violation from 1986 to 1990 doubled perhaps indicates a change in these perceptions. However, as the Report says,

“Sexual violations which lead to conviction are estimated to represent as little as 5 percent of all violent sex offences in New Zealand, so it is impossible to tell whether the rise in convictions represents an absolute rise in the number of offences or merely an increase in successful prosecutions.”

To date, the whole topic of gender-based violence in New Zealand has been seen largely as an issue of family law. Considerable emphasis has properly been placed on therapy and on the protection of the privacy of the family. Family disputes are mediated and tried in closed Court. Consequently the New Zealand public is not yet fully aware of the vastness of the problem. Moreover, traditionally, the rights of women have been subjugated to those of the family or to individual members of the family. Often this has been unwitting. In the International Covenant on Civil and Political Rights:

“Article 23.1. The Family is the natural and fundamental group unit of society and is entitled to protection by society and the state.”

Protecting the family will often mean that the woman's right to lead a life free from violence or intimidation is seen as less important than the need to ensure that children are raised in a unit that will give them financial security and fit our culture's image of an intact, nurturing environment suited to the needs of children. The fact that the children of a violent strife-torn family will not as a rule become well adjusted adults, has not yet changed the perception of the family as the safest and best setting for children and their mothers.

Under the Domestic Protection Act 1982 women (or men) who have been subjected to harassment or physical assault may seek orders protecting them from such abuse. Comparatively rarely have assault charges been

laid. Women complainants who fail or refuse to give evidence can be criticised, and have sometimes been humiliated publicly. Their complaints to the police have often been treated with scepticism. With the knowledge that a significant proportion of homicides in New Zealand are “domestic” in genesis, a change in police policy requiring an arrest if there is independent evidence of an assault became imperative and has done much to rectify the public perception that women would complain but not follow through to give evidence in Court.

When the community stops blaming the woman for the violence that she has suffered or for “breaking up the family” and insists that violence in the home is as much a criminal offence as the same conduct conducted between strangers on a city street, then women’s rights to equality of treatment before the law will be greatly enhanced.

These actions are not mandated simply for compassionate reasons. They are clearly issues of human rights for half of our population. According to Charlotte Bunch:¹²

“The concept of human rights is one of the few moral visions subscribed to internationally. Although its scope is not universally agreed upon, it strikes deep chords of response among many. Promotion of human rights is a widely accepted goal and thus provides a useful framework for seeking redress of gender abuse. Further, it is one of the few concepts that speaks to the need for transnational activism and concern about the lives of people globally.

“The Universal Declaration of Human Rights adopted in 1948 symbolizes this world vision and defines human rights broadly. While not much is said about women, Article 2 entitles all to ‘the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status’. Eleanor Roosevelt and the Latin American women who fought for the inclusion of sex in the Declaration and for its passage, clearly intended that it would address the problems of women’s subordination.”

Governments, and the populations they serve need a clearer appreciation that women suffer “major, different threats to their enjoyment of . . .”¹³ the right to bodily integrity, and the right to life. A clear acknowledgement in New Zealand that we, too, have human rights issues that demand attention, and that women’s human rights are as important as those of their children and male partners, will be an abiding memorial for this important year of women.

The rape of a beautiful tourist or an elderly woman commands widespread public condemnation, as it ought. When the same attitude is displayed to the man who beats or rapes his wife or subjects her to more petty assaults, leaving her bruised, causing the miscarriage of their child, breaking her bones or terrifying her into submissiveness, we will have ac-

12 Charlotte Bunch and Roxanna Carillo, *Gender Violence. A Development and Human Rights Issue*. Center for Women’s Global Leadership, 7.

13 Byrnes, “Women, Feminism and International Human Rights Law – Methodological Myopia, Fundamental Flaws or Meaningful Marginalisation” (1992) 12 *Australian Year Book of International Law*, 204, 217.

knowledged the importance of this issue to the improvement of our society. Perhaps if such cases were isolated, public condemnation would be more swift.

Perhaps too, if more were known about the extent of the problem, which is still aired primarily in the confidential setting of the Family Court the public would be shocked into action. Equally, however, the fact that violence against women is so much a part of our culture may result in its topicality being diminished. It is a bewildering fact of life that rapes in the former Yugoslavia, sex-tourism in Bangkok and female circumcision in Mali engender more outcry and compassion than the rape and assault of a young girl on a back street here in New Zealand.

While I would like to think that if there were more woman lawyers who were advocates in the criminal and family courts of New Zealand and more woman judges presiding over criminal trials and in the Family Court, then the understanding and revulsion for this criminal behaviour might be better communicated to the public, this strategy on its own is not enough.

New Zealand claims a proud record of human rights. Violence against women, specifically directed because of their gender, is a human rights violation. As a community we ought to be protesting as vociferously about this as we do about human rights violations in other countries. Moreover, we ought to be showing the same compassion for these victims as we do for the victims of road accidents and the floods and droughts which threaten our communities. And the compassion and criticism must come from all members of society and not just the women.

Women established and run Rape Crisis Centres, Refuges, Community Advice Bureaux and are the backbone of all such organisations, often working for very little money or voluntarily. They cannot continue to bear this burden on their own. As part of the celebrations of 1993, donations of time, money, commitment and compassion for the victims of gender-based violence and for those who work so hard to alleviate their misery might be a worthy objective.

Water

In many developing countries women regard access to clean water as the most pressing issue, even ahead of their rights to equality in all fields of human endeavour. Without water women cannot grow food, cook for their families, and maintain the most basic levels of hygiene.

Let me quote a typical example of the place that water plays in the daily lives of such women:

“Consider Tendai, a young girl in the Lowveld in Zimbabwe. Her day starts at 4.00 a.m. when, to fetch water, she carries a 30 litre tin to a borehole about 11 kilometres from her home. She walks barefoot and is home by 9.00 a.m. She eats a little and proceeds to fetch firewood until midday.

“She cleans the utensils from the family’s morning meal and sits preparing a lunch of suda for the family. After lunch and the cleaning of the dishes, she walks in the hot sun until early evening, fetching wild vegetables for supper before making the evening trip for water. Her day ends at 9.00 p.m. after she has prepared supper and put her younger brothers and sisters to sleep.”

To add to her burdens:

“Tendai is considered unproductive, unoccupied and economically inactive. According to the International Economic System, Tendai does not work, and is not part of the labour force.”¹⁴

Water is as critical to daily life here in New Zealand, but, except for the occasional drought, or power cuts because of low hydro lake levels, we rarely give its clean and abundant supply much thought. So the issue for women in this country is not yet the physical availability of water so much as equal access to other resources which are critical to her when she must support her children, or herself and her household.

In New Zealand, as is undoubtedly the case in Zimbabwe, and in most other countries in the world, the traditional woman's role has been transformed over the last few decades. The woman's primary role was to be the bearer and raiser of children, and to care for the household. She received income or support from her male partner and was always seen therefore as subservient to him and, like Tendai, of no particular economic worth.

Today, throughout the world, she has all of those roles and, in addition, in more than 20 percent of families, is likely to be the head of the household and main breadwinner.¹⁵ She is still largely regarded as having little economic worth. This is in spite of an emerging trend in New Zealand for more women than men to be joining paid employment in the present difficult employment climate. As a lawyer she is twice as likely as a man to be an employed solicitor, and the man will be three times more likely to be a partner in a legal firm. The Gatfield¹⁶ survey demonstrated that men in the legal profession consistently earned more than women.

“Male partners had the highest income of all groups. Firms had similar proportions of male and female solicitors and male and female associates. However, they tended to have higher proportions of male than female partners, and higher proportions of female than male legal executives. Women were less likely than men to be Board members or on their firm's management committee.”

Women in any occupational class will earn less than their male counterparts, and are so under-represented in senior positions in law, politics and

14 Marilyn Waring, “Gender and International Law: Women and the Right to Development” (1992) 12 *Australian Year Book of International Law*, 177.

15 *The World's Women; Trends and Statistics 1970-1990*; United Nations publication. Note that the statistics supplied in this publication are considered only a useful indication of the number of households where women have sole responsibility for supporting the household given . . . prevailing cultural assumptions and methods of data collection in most countries, women are not usually enumerated as heads of households unless they are either living alone . . . or there is no adult male in the household. Since it is usually assumed that household heads have primary authority and responsibility for household affairs and in most cases are its chief economic support, available statistics on men and women heads of household considerably understate women's household responsibilities. Page 17.

16 Gill Gatfield and Alison Gray, *Women Lawyers in New Zealand: A Survey of the Legal Profession*, February 1993.

business that, even if unconscious discrimination, one could infer a systematic attempt to exclude them. The working life of an average New Zealand woman can be every bit as bleak as that of Tendai. Take Sheryl for example:

“She has two children and a husband now living in Australia. He seems unable to send the financial support that he promised when he left New Zealand at the time of their separation. Sheryl cleans office buildings from midnight to 7 a.m. The children are cared for in her absence by a boarder who, in return, pays lower board. When she gets home from work, she must make the lunches, do all the housework, and snatch some sleep before the children get home from school. Sometimes she has typing on contract to complete at home.

“Before she had the children, she was employed as a senior secretary with management responsibilities in an accountant’s partnership. She has been unable to get similar work because prospective employers think that she will not be up to date with the latest technology, and are doubtful about her ability to care for her children as well as give her undivided attention to her job. Holidays are the worst time, because the children are her responsibility 24 hours a day, 52 weeks a year.

“Her pay is such that she has fallen behind with the payments under the mortgage, and will shortly have to sell the house. Her husband is entitled to 50 percent of the proceeds of sale and only Court proceedings initiated by her will enable her to offset unpaid maintenance. Her lawyer doubts that she will qualify for legal aid, and even if she does, she will have to repay any sum advanced from her share of the proceeds of sale of the home. Her husband is an accountant. He now earns at least four times her income as a cleaner.”

The relevance of these stories is obvious. Although increasingly women are joining the workforce and are responsible for the support of their families, they are yet to receive a fair share of the available income and are not regarded as an important economic factor in most societies. Women are still seen as those who must take primary responsibility for the care of children. That gives them fewer employment choices and results in discrimination against them because of those very responsibilities — often not fairly shared between the parents.

What other resources are women failing to acquire? Rural land in all societies is overwhelmingly owned by men, while in many societies, the women farm it. Even in New Zealand while 80 percent of farm women work with stock, they have no say in the management of it. Only 30 percent regard themselves as farmers, and:

“almost half regard themselves primarily as home makers, but are expected to assist on the farm as required and at short notice, usually for no pay.”¹⁷

Changes in the incidence of taxation as well as the impact of the Matrimonial Property Act 1976 have seen a shift towards shared ownership of farmland over the last 15 years. Nonetheless, women have little access to the farm income and little say in the management of the farming asset or in the investment of the income derived from it.

¹⁷ *Status of New Zealand Women 1992: Second Periodic Report on the Convention on the Elimination of all Forms of Discrimination Against Women*, 59.

Maori women can justifiably claim the same marginalisation as that suffered by Maori men, brought about by the alienation of their land, and, with their Pakeha counterparts are as likely to be responsible for the care and support of their children. The spate of claims under the Treaty of Waitangi has brought much public comment and engendered a fresh interest in the rights of Maori to be compensated for confiscations of land and other taonga. Will redistribution of these assets benefit Maori women equally with Maori men?

Without access to land for the production of income or for the provision of a home, any human being will live on the edge of poverty. The majority of those who suffer such deprivation share their lot with their children. Men who work fewer hours each day, and have fewer family responsibilities, generally have a better standard of living and more assets than their female counterparts and even than their own children.

In war the women and children suffer most and probably longest. They are the first to have insufficient food and medical attention, to suffer unmentionable privation without the antidote of the excitement of action. Recent hard times in this country have resulted, as predicted, in hardship for women. In times of economic warfare, financial privileges such as fleetingly conferred by the Pay Equity legislation are among the first casualties. Then there is the undoubted impact on women of the measures enacted to constrain the payments under the Accident Compensation legislation, arguably a breach of the right under general international law to compensation for injuries inflicted by violence.

The new Act¹⁸ no longer provides for lump sum payments for victims of accidents. That compensation was vital to women who did not have an independent income. If they could not receive earnings-related compensation, at least they could anticipate a modest lump sum award for accidents as varied as those sustained in the home, on the roads, or increasingly as victims of sexual abuse.

The need to restrain spending on legal aid will equally fall more heavily on women than on men. Women are in the lowest income and asset group, and need the assistance of legal advice when suffering family breakdown, or gender-based violence. To add to the pressures encountered for them at these most stressful times, they now have the added uncertainty of access to legal advice and advocacy in what is still essentially the male domain of the Courts.

When women accept that with these economic responsibilities also come rights, they will expect to be more directly involved in negotiations that affect their lives and the lives of their children. Women have increasingly been involved as advocates for change in Local Government, and in issues of health care for women. In the law, women are gradually realising that unless they write the journal articles, appear as advocates in litigation which will have a benefit for women either individually or as a class, then the chances of a female focused jurisprudence is slim indeed.

18 The Accident Rehabilitation and Compensation Insurance Act 1992.

While there are encouraging signs of a development of a feminist legal theory in this country, women as lawyers, as legal scholars, and as judges have as yet made very little impact on practice or on the administration of law. In 1991, Marian Evans and Robin Mackenzie wrote this:

“As they have entered the [legal] profession here in greater numbers and at almost every level (it must be only a matter of time before we have women High Court Judges), women have modified local legal discourse and culture, simply by their presence

“However, we have found little evidence that women practitioners have been proactive in working within the legal system to transform the material conditions of women as a class, in spite of their generally sympathetic and effective responses to individual cases, and their substantial contributions within various faculties, tribunals and inquiries

“It has probably been necessary for women lawyers to concentrate on their own needs and professional status as they become established within legal culture.”¹⁹

While most writers and commentators say it is only a matter of time before women become a force to be reckoned with in the legal establishment, it is still clear that women are fighting for survival in the legal profession. The Gatfield survey underlines the first sobering thought. Changes in the composition of the legal profession and judiciary will not happen because numbers of women increase. We can no longer rely on the fact that women are entering the law faculties in large numbers, and generally graduating with greater distinction than male colleagues to transform the face of the legal profession over the next decade.

“Women’s low representation in partnerships, and in the profession generally, is often explained by reference to their ‘late entry’ into the law. Certainly, the influx of women in any numbers is a relatively recent phenomenon. But not that new. Women have been graduating from the law schools in significant numbers for the past 15 years. And, in the last seven years the number of women has equalled the number of men.

“So, where do all these women go? No statistics conclusively show the ‘exit rate’ of women but a guesstimate can be made by adding the number of newly admitted women graduates to the number of women practitioners in the year before. All things being equal, the new admissions should noticeably swell the numbers.

“This is not the case however. In 1991 for example, 245 women joined the profession but 125 left. In 1990, 225 women entered the profession and 231 left. Rather than bolstering the number of women in the profession, the new graduates appear to be replacing experienced women. Given that few women in the profession have reached retirement age, these figures are alarming.”²⁰

One inference that might be drawn — that women are disenchanted with the practice of law — is borne out by anecdotes told to me. In March of this year, for instance, a father wrote this to me:

“I have a daughter who qualified as a lawyer last year, and now works for a large city law firm . . . She went through school and University confident that she was

19 “The Dream of a Common Law? Feminism and the Teaching and Practice of Law” (1991) 14, 3, 403.

20 Gill Gatfield, “How Are Women Doing 100 Years Later? Chalk and Cheese — Women and Men in the Law”, paper to 1993 New Zealand Law Society Conference.

able to compete on equal terms with male students. She was hardly aware of any sexual discrimination.

"Her start in the law profession is rapidly turning her into an angry young woman. It is probably not appropriate to list the discrimination she has faced because she is a woman — but I must say it amazed me . . . The different ways young men and women lawyers are treated has been highlighted for her by her witnessing the welcome given to the 1993 group of new recruits to the firm recently . . .

"I write as a concerned parent anxious to see that my daughter and all other women lawyers get a fair go."

Human life involves competition, jealousy and boundary guarding. So the exclusion and discouragement of women from the legal profession, in spite of their increasing numbers at graduation, can readily be interpreted as the normal human reaction of a special interest group, guarding its own interests.

However, the public is entitled to better than that. The public is entitled to have its diversity reflected in those groups which hold power and responsibility in society. What are the benefits of this diversity? One commentator says:²¹

"The exclusion of women from positions of power in public life denies society the special contribution that women, whose life experience and priorities are often very different from those of men, may make to decision making.

"Women, it is argued, can bring distinctive values and priorities and perspectives to public life. Since their traditional preoccupation with the home and family make them particularly sensitive to issues and decisions that affect women, children and every aspect of family life.

"The case has been argued that women speak 'in a different voice' because certain attributes may be linked to gender. Attachment, affiliation, empathy and interdependence are stressed by women, who tend to favour a 'web' culture of affiliation, while men have a more hierarchical male perception of the world as a 'ladder', stressing competition, independence, separation and formal rights. The respective sets of values, however derived, are not exclusively gender based, and both are clearly useful to society and complementary."

If women's hold on the profession is tenuous, energy is diverted into survival, not creativity. Creativity may begin to flourish when, like plants in a garden, groupings of the same species bloom more readily than those spaced widely apart.

" . . . The fewer the number of women in public life, however, the less they are likely to be able confidently to assert distinctively female values, priorities and characteristics. As a minority operating in a male domain, most women public figures, to be accepted and to function on a basis of equality with men, have had to adapt to and adopt the male priorities predominating in public life.

"Minorities, such as women who are successful in a male world, according to a classic theory of minority behaviour, absorb the dominant culture to such an extent that they tend to dissociate themselves from other women, to underrate their own success and to perceive any discrimination they meet as a result of their own shortcomings.

21 *Women 2000*. From a Paper Presented to the United Nations Expert Group Meeting on the Role of Women in Public Life, by Virginia Willis, May 1991.

"It takes a minority of a certain minimum size, 30 percent to 35 percent, to be able to influence the culture of the group and to facilitate alliances between group members.

"That theory may explain why lone women who reach high office have often appeared not to bring distinctively female values to their office."²²

The numbers of women involved in decision-making must be increased for the good of the whole of society. But women in isolation from each other cannot achieve this on their own. Increasingly women will have to assert what they want personally from the profession. One step is to develop a feminist jurisprudence in this country.

The development of a jurisprudence focused on issues of critical importance to women will be an evolutionary process. As with legal writing primarily undertaken by men over many generations of legal activism, women will debate, experiment, submit, write and experience changes in legal life. With the energy generated, women will find the support and courage to begin to be different from the overwhelming pressures of hundreds of years of legal tradition. They will adopt parts, adapt others and delight in the richness of legal debate and development.

The environment will allow female excellence to flourish, and women will be freed to aspire to positions of influence and responsibility in the law. When there are women on the Court of Appeal, the mysteries of the vulnerability of women and their children to crime and the appropriate punishment or therapy for those who victimise them will be less opaque.

When Justice Bertha Wilson wrote the majority opinion in *Lavallee v R*²³ no lawyer reading it could mistake the gender of the author. The influence of that judgment has gone well beyond Canada to the Courts of the United States of America and to Australia. The judgment recognised that the defence of self-defence had developed in a gender-biased manner. These views were foreshadowed when she said:

"A distinctly male perspective is clearly discernible and has resulted in legal principles that are not fundamentally sound and should be revisited as and when the opportunity presents itself. Canadian feminist scholarship has, in my view, done an excellent job of identifying those areas and making suggestions for reform. Some aspects of the criminal law in particular cry out for change since they are based on presuppositions about the nature of women and women's sexuality that in this day and age are little short of ludicrous."²⁴

In New Zealand, there is emerging evidence of a desire on the part of the male judiciary to have the assistance of the woman judge's perspective on issues that patently affect women more than men.²⁵ The legal

23 [1990] 4 WWR, 1, 55 CCC (3d), 97.

24 B. Wilson J., "Will Women Judges Really Make a Difference?" The Fourth Annual Barbara Betcherman Memorial Lecture, Osgoode Hall Law School, 8 February 1990.

25 "The six Judges who have sat on this case in the two Courts are all men, most of us more than middle age. This is the type of case suggesting that a woman's insight would be helpful on at least one of the benches in assessing the claims, personality and situation of a litigant woman and arriving at justice between man and woman." *Phillips v Phillips* CA 369/91, 26/2/1993, per Cooke P.

profession, if it is to avoid widespread public anger, needs to commit itself to employ more women, to encourage them to break through the burn out period and remain in the profession, to foster them for judicial appointment, for appointment to public office where they will have power and responsibility and to positions in academic life where women lawyers are virtually invisible.

Regardless of the impact of the present methods of legal practice on women, changes to the legal *culture* may well benefit many younger men and allow them to remain in the profession too. A profession which is as responsive to the personal and family needs of its members, is more likely to command the trust and loyalty of its members, than one which today is widely perceived as being more concerned with the income of the partnership than the professional service it can offer to its clients.

Women can make a difference. Freed from their isolation as lawyers, mothers, and judges they can work together to change the law, to develop it so that it addresses their needs as well as the needs of the rest of the population. Just as they have for the first time in international affairs ensured that human rights violations in time of war include those suffered by women because of their gender, they can tackle the more insidious problems faced by women in this country. To achieve this, they must accept that in numbers there is strength. A single woman can achieve much, but a group can achieve miracles.