FAMILY VIOLENCE

"Social fact Legal Responsibility" by Frank Bates

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JOINT COMMITTEE

On Wednesday February 25th 1976, a Joint Committee of both Houses of the English Parliament was set up to consider the whole matter of intra-familial violence.[1] This development is, it is suggested, of very considerable significance because it marks, really for the first time, an official awareness of the phenomenon of violence in the family. Clearly, certain aspects of the matter have received parliamentary attention,[2] but this is the first time in jurisdictions analogous to Australia that a total overview of the matter has been attempted. Accordingly, it is the purpose of this article to consider the problem from an Australian point of view and to suggest policies which might adequately protect the victims of such violence.

1. Inter-Spousal Violence

Traditionally, the phenomenon of inter-spousal violence was subsumed within the matrimonial offence of cruelty, for, as Ayliffe put it in 1726,[3] ". . . as marriage was instituted by God in a state of innocence, it must of consequence be for the mutual comfort and help of each other; and, therefore, a cruel and severe usage frustrates one of the ends of that state." In Australia, in 1973, 1,660 petitions based on s.28 (d) of the **Matrimonial Causes Act** 1959-1966 (Cth.) were granted,[4] and, although it is clear that some did not involve actual physical violence, a great many did. At the outset it must be stated that s.28 (d), which provided that there would be grounds for divorce if, ". . . since the marriage, the other party to the marriage has, during a period of not less than one year, habitually been guilty of cruelty to the petitioner," has not worked well. It differs from many of its counterparts[5] in that a temporal element, "during a period of not less than one year", is specified and, in addition, "throughout".[6] The kind of problem to which the inclusion of such a temporal element gives rise is well illustrated by the particularly unsatisfactory decision in the Tasmanian case of **Maney** v. **Maney.**[7] There, the respondent had hit and kicked the petitioner wife with great violence two or three times each week for a period of four years. In September 1943, they moved house and he continued to ill treat her in similar fashion until March 1944, when an incident in which he had kicked and punched her and threatened to cut her throat, she left him and did not live with him thereafter. Despite the obvious nature of the violence to which she had been subject, it was held that her petition would not succeed. In a rather less than satisfactory judgment Morris C.J. was of the view[8] that "during" meant "throughout" and that, therefore, to say that the wife's petition would succeed was equivalent to saying that seven was equal to twelve, because the wife had only relied on the seven months' conduct prior to her departure. "If a woman", said the Chief Justice,[9] "may leave after seven months of assaults and beatings and claim the benefit of the clause because of the likelihood that if she remained the assaults would continue, why should she not leave after one month, or one week, or even one day?" The upshot of **Maney** v. **Maney**, and the cases which take the same kind approach,[10] is that it is very difficult for a maltreated wife both to escape her husband's violence and, at the same time, to take advantage of s.28 (d).

Even in jurisdictions where no temporal element is specified, there have been some **dicta** which would, doubtless, sound curious to the observer interested in inter-spousal violence as a social phenomenon: thus, in 1903 in the case of **Jeapes** v.

Jeapes,[11] Sir Francis Jeune P. stated that, "To leave a wife to starve is undoubtedly cruelty, but I was not certain it could be construed into legal cruelty."[12] The rather different formula recently adopted in England and, earlier, in New Zealand, has not been without its difficulties. It is provided by s.2 (1) (b) of the English **Matrimonial Causes Act** 1973 that there may be evidence of irretrievable breakdown of marriage if, ". . . the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent."[13] This particular enactment has given rise to some particularly unsatisfactory **dicta,** the best known being the comments of Bagnall J. in the case of **Ash** v. **Ash.**[14] In that case, the wife had claimed that she could not reasonably be expected to live with her husband because of his acts of violence and intoxication. In the event, the judge granted the decree but made the following comments regarding the character and behaviour of spouses in an action based on s.2 (1) (b): "The general question can be expanded thus: can this petitioner, with his or her character and personality, with his or her faults and other attributes, good and bad, and having regard to his or her behaviour during the marriage, reasonably be expected to live with this espondent? It follows that if a respondent is seeking to resist a petition . . . he must in his answer plead and in his evidence establish the characteristics, faults, personality attributes and behaviour on the part of the petitioner on which he relies. Then, if I may give a few examples, it seems to me that a violent petitioner can reasonably be expected to live with a violent respondent; a petitioner who is addicted to drink can reasonably be expected to live with a respondent similarly addicted; a taciturn and morose spouse can reasonably be expected to live with a taciturn and morose partner; a flirtatious husband can reasonably be expected to live with a wife who is equally susceptible to the attractions of the other sex; and if each is equally bad, at any rate in similar respects, each can reasonably be expected to live with the other." At one level, these comments clearly demonstrate the failure of compromise between the doctrines of irretrievable breakdown and matrimonial offence as a basis for divorce. At another, and far more disturbing, level they represent a total failure to appreciate marriage breakdown in personal terms. As Hambly, quite properly, points out[15] the similarity between Bagnall J.'s remarks and the notorious **dictum** of Sir William Scott in **Beeby** v. **Beeby.** is only too apparent[16] There, it was stated that relief should be refused where both parties had committed matrimonial offences so that, ". . . the parties may live together, and find sources of mutual forgiveness in the humiliation of mutual guilt." Hambly went on to comment[17] that, "One wonders what a psychiatrist would make of the argument that spouses, both of whom were violent, alcoholic, or depressive, or promiscuous could reasonably be expected (because of their common interests?) to maintain a matrimonial relationship." Despite the rather more humane and, it is suggested, realistic exposition by Ormrod J. in **Pheasant** v. **Pheasant,**[18] the approach adopted in **Ash** appears to have found, at least, some judicial favour. In **Pheasant,** Ormrod J. had said that the question was whether, ". . . it is reasonable to expect this petitioner to put up with the behaviour of the respondent, bearing in mind the characters and the difficulties of each of them, trying to be fair to both of them, and expecting neither heroic virtue nor selfless abnegation from either. It would be consistent with the spirit of this new legislation if this problem were to be approached more from the point of view of breach of obligation than in terms of the now outmoded idea of the matrimonial offence. It must also be borne in mind that the petitioner is still free to make his own decision whether to live with his wife or otherwise. The Court is only concerned with the next stage, i.e. whether he is entitled to have his marriage dissolved." More recently, however, Dunn J., in the case of **Livingstone-Stallard** v. **Livingstone-Stallard,**[19] appeared to favour the approach enunciated by Bagnall J. in **Ash,** when he said that, ". . . I ask myself the question: would any right-thinking person come to the conclusion that this husband has behaved in such a way that this wife cannot reasonably be expected to live with him, taking into account the whole of the circumstances and the characters and personalities of the parties?" It is difficult to escape the conclusion that the matrimonial offence of cruelty and related concepts may, all too frequently, be of little value in protecting the victim of inter-spousal violence.

The trend, however, throughout the common-law world has been away from the matrimonial offence doctrine.[20] In Australia, it is provided by s.48 (1) that the sole ground for divorce, ". . . shall be . . . that the marriage has broken down irretrievably" and, in s.48 (2) that, ". . . the ground shall be held to have been established . . . if, and only if, the court is satisfied that the parties separated and thereafter lived separately and apart for a continuous period of not less then 12 months immediately preceding the filing of the application for dissolution of marriage." Although there are some provisions designed to safeguard the interests of the wife, notably certain of the provisions relating to property,[21] a criticism which has continuously been levelled at the legislation is its failure adequately to protect the wife who, for one reason or another, is both maltreated and unable to leave the matrimonial home. In this context, the provision contained in s.114 which empowers the court to, ". . . make such order or grant such injunction as it thinks proper with respect to the matter to which the proceedings relate, including an injunction for the personal protection of a party to the marriage or of a child of the marriage or for the protection of the marital relationship or in relation to the property of a party to the marriage or relating to the use or occupancy of the matrimonial home." Although the idea of the use of injunctions in matrimonial matters is not new, indeed such provision was made in s.124 of the **Matrimonial Causes Act,** it is clear that s.124 is deliberately wide ranging in its ef-

fect. One wonders, though, how effective such injunctive provisions will prove in practice; Erin Pizzey, in her important book **Scream Quietly or the Neighbours Will Hear**[22] considers that the injunction has the advantage that the fact of any assault has been put in writing. However, she goes on to admit[23] that, "Even the barristers know that an injunction is useless against an angry and frightened man. A frightened woman can get no comfort from knowing that she has enlisted the power of the courts, for if the man is still at large to do what he please, a piece of paper from the court can never stop him." In addition, it may well be that the fact that an injunction has been sought or obtained will only operate as provocation or, at least, make some situations worse.

Unlike the phenomenon of child abuse, which will be considered later, wife abuse has, until fairly recently, attracted very little attention. In the debates on the **Family Law Bill** in the Senate, however, Senator Martin of Queensland commented[24] that, "A conservative assessment currently is that approximately 5,000 families in Australia are currently in a situation where the husband habitually batters the wife . . . " Certainly the most significant contribution to awareness of the topic is the book by Erin Pizzey earlier referred to.[25] It is a truly horrifying book: instances akin to the facts of **Maney** v. **Maney**[26] occur on almost every page and many are a great deal worse. She further contends[27] that the various social and law enforcement agencies are not of much value at all. The police attitude, she states,[28] "to wife-battering reveals an understandable but unacceptable schizophrenia in their approach to violence." The suggestion which she makes to the effect that police are unwilling to intervene in domestic disputes is borne out by the survey conducted by Parnas in Chicago in 1967.[29] Parnas suggests that police very often make contact with domestic disputes but such contact very rarely results in arrest. There are often good reasons why police are unwilling to intervene in a manner which would prove effective; thus, Parnas cites the following illustration,[30] "A woman called for police assistance where her husband was assaulting her and tearing up the place. When the officers arrived, the husband had to be restrained and was pushed to the floor in the course of the scuffle. At this point, the wife, who had initially called the police, attacked one of the officers with a bar stool." A further difficulty which police officers face is that, although the law of assaults is the same as between husband and wife as between any other persons, there are many practical difficulties. A wife, for obvious reasons, may be reluctant to take out a summons against her husband for assault while still living in the same house with him. There are, of course, evidential problems: in **R.** v. **Lapworth,**[31] Avory J. held that the wife of a person charged with inflicting personal injury on her was both a competent and compellable witness for the prosecution. The reason given by the judge[32] was the obvious one that if such were not the case, ". . . where the assault was committed in secret by one spouse upon the other, there would be no means of proving it." On the other hand, however, the High Court of Australia held differently in the case of **Riddle** v. **R.**[33] There, the accused had been convicted of wounding his wife with intent to murder her, she had stated that she did not want to give evidence but the trial judges had ruled that she was a compellable witness. The High Court quashed the conviction and O'Connor J. stated that, ". . . it is not at all clear that the necessity which is the foundation . . . of such cases goes beyond securing to the wife the protection of the law against her husband's criminal violence where it is her wish to avail herself of the protection." Despite the fact that **Riddle** has subsequently been applied,[35] aspects of it are, at least, open to question. O'Connor J. seemed to regard assaults by one spouse on another as being in some kind of special category, exempt from the elements of public policy which are inherent in the very existence of the criminal law. In addition, it is by no means unlikely that a variety of threats or inducements would be made to a wife in such circumstances. This is not to say, however, that once in court a battered wife might not similarly change her story and the tribunal might then be faced with all the problems which attach to adverse witnesses. A further criticism noted by Pizzey[36] of police attitudes to domestic violence is their failure to notify appropriate social service agencies; Parnas, indeed, goes further and suggests[37] a total change in attitude by the police force. In support he quotes former Chicago Police Superintendent O.W. Wilson, who stated[38] that, "Patrolmen should be practical social workers and encourage persons to come to them for assistance and advice when in trouble. Distress situations are frequently symptoms of deep rooted social ills that, if not corrected, may result in criminal and other anti-social conduct and thus adversely affect the remainder of the life of the individual. By giving assistance, advice and sympathy to those in distress, patrolmen help prevent wasted lives and also win friendship and co-operation for the department."

As well as the police, other agencies, claims Pizzey, with less excuse, are found wanting.[39] Social Security officials, hospitals, mental hospitals, Doctors, Marriage Guidance bodies, the Family Service Unit, the Probation Service and Health Visitors have all failed to appreciate the extent of the problem and to act constructively, a view which is also shared by Parnas writing of the United States.[40] There is little that the law, in a strict sense, can do about these criticisms: stories about naive probation officers, maladjusted social workers and unhappily married marriage guidance counsellors[41] are legion and will, doubtless, always be with us. What is capable of achievement is a more effective organisation so that the available resources can be better utilised. Australia is fortunate, it is suggested, in possessing an institution which ought to be able to collate the functions of all these bodies as well as the wide variety of others, such as the Society of St. Vincent de Paul or the Salvation Army, which may also come into contact with battered wives. It is the Family Court of Australia, as set up in Part IV of the **Family Law Act**

1975, and its precise function in this regard will be considered later in the article.[42]

Apart from bringing the phenomenon of wife battering to general notice, the major part of Pizzey's book is devoted to a description of the operation of the refuge which she and others founded for such women and their children — Chiswick Women's Aid.[43] Similar organisations are currently being set up throughout Australia,[44] but without any significant support from either State or Commonwealth Governments. In view of the clearly documented failure of existing social service institutions to cope with the interspousal violence and its implications, it is suggested that governmental support must be given to this kind of development. Traditional apathy and traditional methods have failed to cope with the problem, a more radical approach could well succeed, particularly if it has the confidence of the victims themselves.

2. **Child Abuse**

"The battered-child syndrome", said C.H. Kempe,[44] "is a term used by us to characterise a clinical condition in young children who have received serious physical abuse, generally from a parent or foster parent. The condition has also been described as 'unrecognised trauma' by radiologists, orthopedists, pediatricians and social service workers. It is a significant cause of childhood disability and death. Although certain manifestations of the syndrome had first been noted in 1955 by Woolley and Evans,[45] it was not until the appearance of Kempe's study in 1962 that the phenomenon, as such, was recognised. However, a major problem is caused by the fact that the full extent of the problem is extraordinarily difficult to ascertain because, first, it is suspected that about half of all cases are not discovered at all[46] and, second, as Stark[47] has pointed out the victims are often under the age of three and, thus, cannot speak. Estimates, however, have been made: DeFrancis considers[48] that, in the United States, there are about 10,000 cases annually and, in England, Simpson,[49] basing his estimate on the number of corpses coming to mortuaries in the Greater London area, was of the opinion that between two and three hundred cases occur annually in Greater London alone.

First, what are the characteristics of parents who assault their children? First, there is some doubt as to which parent more commonly commits the assault. In the words of Renvoize,[50] "As to whether more males than females attack, there is no clear cut answer: different studies show diametrically opposed results. Everything seems to depend upon where and how the studies are carried out, and who is organising them. For example, in their **Retrospective Study of Seventy-Eight Battered Babies** (1969) the N.S.P.C.C. found that in forty-two cases it was the woman who had battered, in thirty-three cases the man and in three cases the two were in very close collusion. Other reports (mostly American) show as many men as women battering and a few even showed a predominance of men. But the study carried out by Steele and Pollock found that in fifty instances it was the mother who was the attacker and in only seven cases the father." However, Howells points out[51] that the child murderer is almost always the mother, because she ". . . may have stronger motivations as well as more opportunities for the act." Since, in most families, the mother is forced more into longer and more direct contact with her children than the father, Howells' comment would seem to be in accord with commonsense as well as some of the findings of other commentators. "Parents who physically abuse their babies and children", state Steele and Pollock,[52] "come from all walks of life and all socio-economic levels. There is no specific psychiatric diagnosis which encompasses the personalities and behaviour of all of them. They share, however, a common pattern of parent-child relationships or style of child rearing characterised by a high demand for the child to gratify the parents and by the use of severe physical punishment to ensure the child's proper behaviour. Abusive parents also show an unusually high vulnerability to criticism, disinterest or abandonment by the spouse or other important person or to anything that lowers their already inadequate self esteem. Such events create a crisis of unmet needs in the parent, who then turns to the child with exaggerated needs for gratification. The child is often unable to meet such parental expectation and is punished excessively."

Whatever the social or psychological causes of child abuse, it is clear from reported instances that the aim of any legal system or system of social services must be the protection of the children. Hence, Renvoize describes[53] a case reported in the English newspaper, **The Daily Mirror,** where a father was sentenced to three years imprisonment for having placed his three-year-old son in a hot oven. Words which were printed on the oven were imprinted on the child's skin, the scars left on his body were likely to remain for life and the boy had spent eleven days in hospital.

In January 1973, there occurred a case which, perhaps more than any other, raises all the issues which are involved in the resolution of the problem of child abuse. This was the case of Maria Colwell, about which much has, inevitably, been written.[54] Maria was born in March 1965, the fifth child of Mr. Colwell and his wife Pauline. When Maria was a few weeks old, Mrs. Colwell left her husband, who died shortly after. In August 1965, Maria was placed by her mother in the care of her mother's sister in law and her husband, Mr & Mrs Cooper where she remained more or less continuously until October 1971. The Coopers were formally approved as foster parents by the local authority in 1966, but it had always been made clear that the authority's intention had been to return the child to her mother. In October 1971, she returned to her mother who, in the meantime, had married William Kepple. After fifteen months of continuous ill-treatment, Maria was finally battered to death by Kepple, who was subsequently convicted of her manslaughter. A particularly unhappy feature of an appalling case was that, even after her return to her mother, she remained under the care of the local authority which had received complaints from neigh-

bours regarding the treatment Maria was receiving. Further, complaints had been made to the Police, the National Society for the Prevention of Cruelty to Children, the Housing Department and various other agencies, but no effective step was taken by any of the bodies. In July 1973, a committee (The **Field-Fisher** Committee) was set up to, ". . . inquire into and report upon the care and supervision provided by the local authorities and other agencies in relation to Maria Colwell and the co-ordination between them." The subsequent report has been described by Stone[55] as, ". . . a horrifying document — far more spine chilling than accounts in the press. It can be compared only with the findings of the great Royal Commissions in the middle of the last century on the employment of young children in factories and coalmines." The conclusion reached by the committee, with Miss Olive Stephenson dissenting, was that, "What has clearly emerged, at least to us, is a failure of system compounded of several factors, of which the greatest and most obvious must be that of the lack of, or effectiveness of, communication." An important part of the thesis advanced by Renvoize is that, although lip-service is paid to the ideal of co-operation, between the various agencies involved, it rarely gets further than that. "[T]ime and again," she states,[56] "I have found distrust and suspicion between them. Each group understands and therefore accepts its own difficulties, but is less tolerant of other people's inadequacies. The real problem is that there are many different ways of treating it, and it cannot be expected that all the groups, each of whom holds firmly to its own pet theories, will agree with each other." Social workers in England have, it appears, attracted particular criticism: thus, Freeman has said,[57] "The impression is given of their being over-protective of battering parents, obsessed with preventing breakdown of the family unit, concerned with rehabilitation. It has been suggested that children are used as therapeutic agents for their parents. Other critics claim that social workers are over-concerned with preserving a viable working relationship with the families in their case, the warmth and continuity of which would not withstand a court action." Similarly, Renvoize quotes[58] the remarks of a woman police-inspector who commented, "They're too middle class, most of our social workers. They don't understand working-class language. They're communicating at different levels and they don't realise it. They're very careful how they speak to these parents, they don't want to cause any offence and the result is they don't get anywhere." A further criticism advanced by Renvoize[59] is that social workers are insufficiently aware of legal developments. This can be a crucially important factor, particularly in view of cases such as **J. v. C.,**[60] **Re W (an infant)**[61] and **O'Connor and Another v. A. and B.,**[62] in which a somewhat different approach to children's rights has been adopted. In England, however, two books, by Michael Zander[63] and J.D. McClean,[64] have sought to provide an up-to-date version of the law for social workers and it is suggested that the existence of a similar text would be a valuable development in Australia. In addition, a series of texts on specific areas of the law as it affects the social worker is planned for 1976 in England.[65]

It may also be that social workers and others, such as probation officers, should be granted wider and more effective powers. Thus, Freeman[66] cites the case of the two-year-old boy who starved to death whilst strapped in his pram. He was discovered by police who had broken in to feed a starving dog, but probation officers had no right of entry even though the child's mother was on probation and had not been seen by officers for four months. In view of cases such as this, it is quite clear that, because of the nature of their powers, the police may well have an important part to play. This point has been made strongly by Catherine King,[67] particularly in regard to policewomen. However, as Renvoize has commented,[68] it may be that the police must be willing to surrender some of their traditional independence as,[69] "Modern social welfare is part of such a complicated structure that it can only function successfully if the interests of the people who are being helped are put before departmental ambitions." She describes[70] a system operated by the Northamptonshire police force in England which she considers has dissipated most of the hostility between the police and the other professions involved in the problem. The basic unit involved in this scheme is a team consisting of a consultant pediatrician, a senior police surgeon, a senior C.I.D. officer and a senior inspector of the N.S.P.C.C. The primary duty of this team is to collate all the information gathered by its members and then to decide the most suitable course of action to be taken for the child and its family and, thus, not every instance will be regarded simply as a matter for criminal prosecution.

"Lip service paid to co-operation"

Despite a predictable public demand — Freeman has noted[71] a demand for hanging and sterilisation of offending parents in the correspondence columns of the English newspaper, **The Sunday Times** — it is suggested that the criminal law will be as ineffective in dealing with child abuse as with inter-spousal violence for very much the same reasons. Proper evidence may be hard to obtain[72] and the sanctions of the criminal law will often not be appropriate. Various suggestions have been made which involve the use of new kinds of institution. Hence, Bevan advocates[73] the introduction of parental training orders which would provide, ". . . either for the rehabilitation of the family through

compulsory residential training and care or, in less serious cases, for compulsory attendance of the parent on a specified number of occasions at a training centre to receive education in parenthood." There is particular merit in this proposal in that parents guilty of child abuse tend to have more children than they can cope with and such a course of training might well lessen the risk of injury to any children in the future. Another, not dissimilar suggestion is of the **Crisis-Nursery**[74] where potentially violent parents are able to leave their children whenever a crisis develops. It ought not to be beyond current Australian resources to establish Child Protection centres, as envisaged by Helfer,[75] in centres of population in connection with existing institutions.

The immediate problem, however, is one of detection. In the United States of America, all jurisdictions[76] have legislation providing for the reporting of incidents of child abuse. In Australia, the only jurisdiction which has enacted any such legislation is Tasmania. In the **Child Protection Act** 1974 it is provided by s.8 (1) that, "Any person who suspects upon reasonable grounds that a child who has not attained the age of 8 years has suffered injury through cruel treatment is entitled to report the matter to an authorized officer, and the report may be made orally or in writing." It is further enacted by s.8 (2) that certain classes of occupation, as specified by order of the Governor, shall make such a report when circumstances warranting it come to their notice. Although this Act marks a substantial advance in Australian child law, one wonders how much it will achieve in real terms: the American experience suggests[77] that medical practitioners, in particular, are often unwilling to report cases of abuse which come to their notice and, by its very nature, the scope of the Act is confined to discovered cases. It sets up no new machinery for the discovery of instances of child abuse, even though it does provide legal protection for informants.[78] The Act does, however, provide that a Magistrate, on application by the Child Protection Assessment Board,[79] may order that a child be kept in hospital for a period not exceeding 30 days, with a power to order hospitalisation for another such period if he is satisfied that it is in the interests of the child to do so.[80]

It is clear, it seems to the present writer, that there is no single solution to the problem of child abuse. Much may be achieved by a more rational and co-operative organisation of social welfare services. There is much that the Family Court of Australia can do in this regard, provided that it is properly and adequately staffed: it can act as a focal point for the various organisations involved in the problem and, thus, go some way to preventing cases such as that of Maria Colwell.[81] It is also difficult to avoid the conclusion that a greater degree of state intervention may be necessary and, hence, that wider powers be given to relevant organisations. Clearly, this last suggestion is not likely to meet with immediate and welcoming acceptance, but if the problem is to be tackled squarely, considerations of parental rights and privacy are, surely, of secondary importance.

3. Conclusions

Although different solutions are clearly required to the two different, though related, aspects of intra-familial violence, it is suggested that there is one significant general conclusion which can be drawn. It is that the family is by no means the beneficent institution which it is sometimes claimed to be. Thus, we are told by a catholic writer Simon Scanlan[82] that, "Since the family is the foundation of society, the other institutions had better do all they can to shore up the family if they themselves hope to survive. For, if the family goes down the drain, they will go with it." Too often, in this context, "shore up" is taken to mean keep together at all costs. It is only too clear from the foregoing, it is suggested that there are some families which cannot, by any reasonable standards, be regarded as viable: many wives would be safer and better off away from their husbands and many children from their parents. It is the duty of everyone concerned with this area of the law and its administration to ensure that, when necessary, the victim is protected. This is a real, documented consideration which must, surely, be of more social importance than the maintenance of an institution, whatever claims may be made for it.

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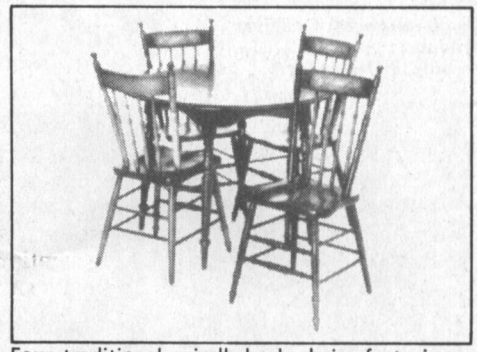
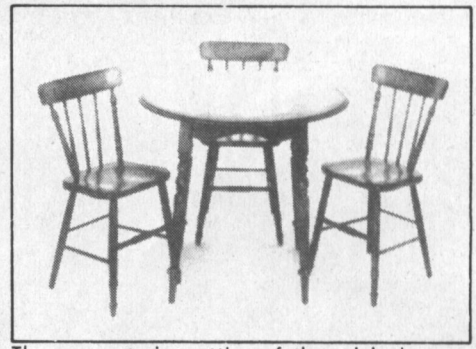
1. See **The Times** newspaper for Thursday, February 25th 1976. Previously a Select Committee Report on **Violence in Marriage** (Vol. 1) had been published in July 1975.
2. See, for instance, the **Tasmanian Child Protection Act** 1974 considered infra text at n.78.
3. **Parergon Juris Anglicani** (1726) p. 229. For a more modern redition see J.M. Biggs, **The Concept of Matrimonial Cruelty** (1962) p. 9.
4. See **Official Yearbook of Australia** (1974) p. 177.
5. See, for example, in Canada **Divorce Act** 1968 s.3 (d), in England, prior to the **Divorce Reform Act** 1969, Matrimonial Causes Act 1965 s.1 (a) (iii).
6. See **Ogston** v. **Ogston** (1935) 53 C.L.R. 526 per Rich J. at pp. 529-530, also **Muirhead** v. **Muirhead** (1932) S.A.S.R. 426 and **Colless** v. **Colless** (1934) 51 W.N. (N.S.W.) 118 **cf. Richardson** v. **Richardson** (1943) 61 W.N. (N.S.W.) 12.
7. (1945) Tas. S.R. 15. For a fuller description of the failure of s.28 (d) see Frank Bates, "Habitual Cruelty — The Right Approach" (1973) 47 **A.J.L.** 30.
8. (1945) Tas. S.R. 15 at 17.
9. Ibid.
10. See also **Swan** v. **Swan** (1962) 4 F.L.R. 452, **Tilney** v. **Tilney** (1968) 118 C.L.R. 526 and **Cole** v. **Cole** (1969) 15 F.L.R. 297.
11. (1903) 89 L.T. 74 at 75.
12. There has been considerable judicial dispute as to "cruelty" means the same in its legal or colloquial sense. For a commentary see L. Rosen, **Matrimonial Offences** (3rd Ed. 1975) pp. 162-166.
13. The New Zealand provision is contained in s.19 (1) (c) of the **Domestic Proceedings Act** 1968 which provides that ". . . since the marriage any act or behaviour of the defendant affecting the applicant has been such that in all the circumstances the applicant cannot reasonably be required to continue or, as the case may be, resume cohabitation with the defendant." This section does not, however, provide grounds for divorce, merely for a separation order. Although such an order will entitle the petitioner to a divorce if it has been in operation for three years.
14. (1972) Fam. 135 at 140.
15. "Reforming Australian Divorce Law" (1972) 5 **Fed. L.R.** 59 p.79.

Continued page 63

VINTAGE MELCHAIR



Four traditional spindle-back chairs featuring the original 'KANGAROO' design and a 3'6" diameter round table.



The compact size setting of the original 'KANGAROO' design shows three small chairs, and a 3' diameter round table.

Four traditional 'KANGAROO' chairs with an oblong Refectory table 60" x 30" x 30".

'VINTAGE MELCHAIR' reproduction settings are polished to the original Colonial Brown, Olive Green, and other Colonial colours on myrtle timbers are available.

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40 Beecher Street, PRESTON. Victoria. 3072
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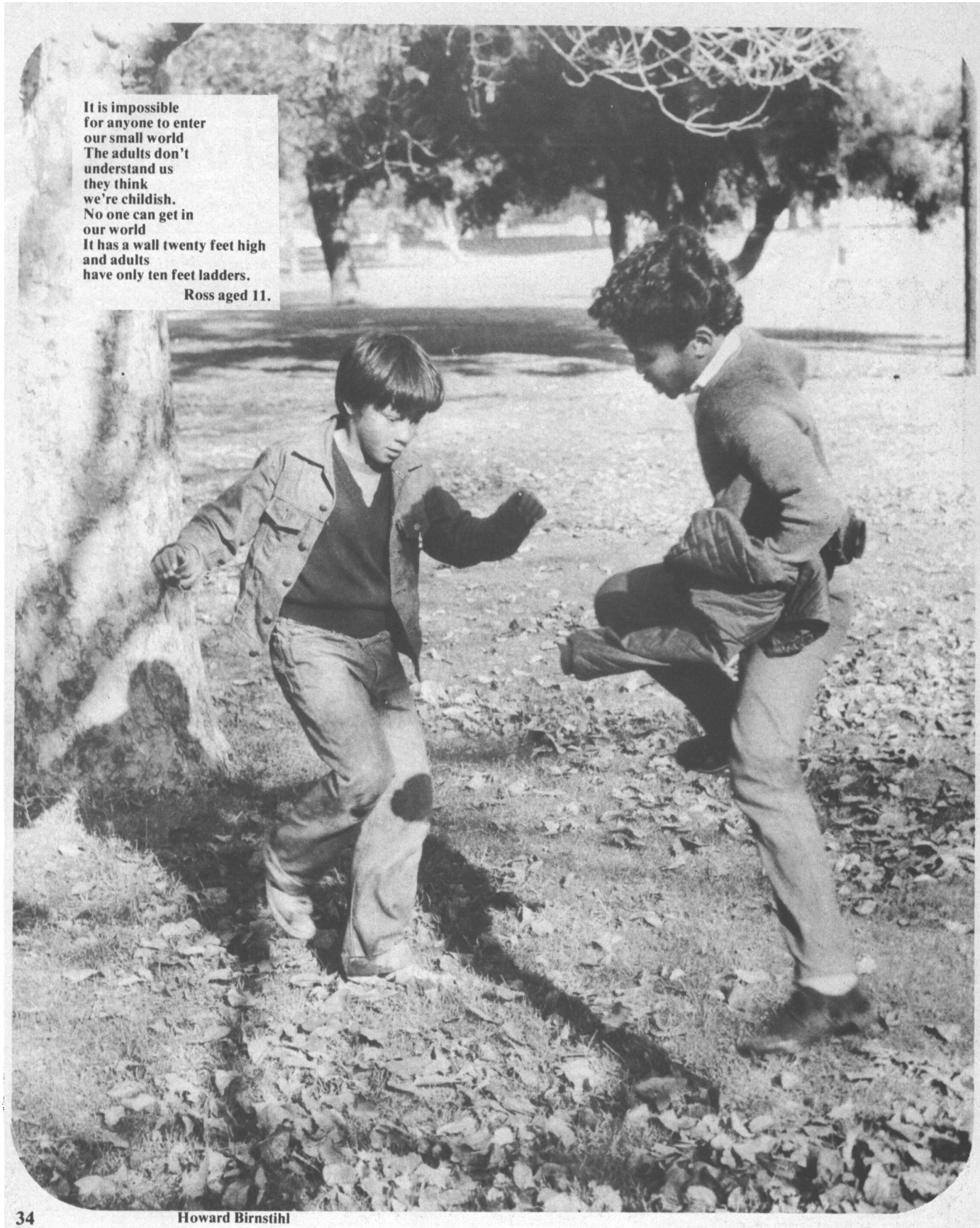

It is impossible
for anyone to enter
our small world
The adults don't
understand us
they think
we're childish.
No one can get in
our world
It has a wall twenty feet high
and adults
have only ten feet ladders.

Ross aged 11.

Howard Birnstihl

Continued page 32

16. (1799) 1 Hagg. Ecc. 789 at 790. 162 E.R. 755 at 756.
17. loc. cit. p.79.
18. (1972) Fam. 202 at 208.
19. (1974) 3 W.L.R. 303 at 307.
20. How much so can be seen from a comparison of two surveys by D.J. Freed entitled, "The Grounds for Divorce in American Jurisdictions" at (1972) 6 **Fam. L.Q.** 179 and (1974) 8 **Fam. L.Q.** 401.
21. **Family Law Act** 1975 ss. 78-79. For comment see Frank Bates, "Matrimonial Property and the Constructive Trust: Some Commonwealth Developments" (1976) 126 **New L.J.** 280.
22. (1974) p.118.
23. Op. Cit. p.120.
24. **Weekly Hansard (Senate)** 1974 p. 2504.
25. Supra text at n.22.
26. Supra text at n.7.
27. Op. cit. pp.98-111.
28. Op. cit. p.98.
29. R.I. Parnas, "The Police Response to the Domestic Disturbance" (1967) **Wisc. L.R.** 914.
30. Ibid. p.921.
31. (1931) 1 K.B. 117.
32. Ibid. at 121.
33. (1911) 12 C.L.R. 622.
34. Ibid. at 639.
35. **R.** v. **Byrne** (1958) Q.W.N. 18.
36. Op. cit. p.99.
37. loc. cit. p.956.
38. **Police Administration** (2nd Ed. 1963) pp.228-9.
39. Op. cit. pp.99-111.
40. loc. cit. p.960.
41. Pizzey (Op. cit. p.107) comments that, "The people who benefit most from Marriage Guidance are, I think, those who become councillors. For them it offers instant therapy under the guise of helping others . . ."
42. Infra text at n.80 ff.
43. Notably op. cit. pp.9-25, 130-143.
44. C.H. Kempe **et al** "The Battered-Child Syndrome (1962) 181 **J. Am. Med. Assoc.** 17.
45. P.V. Wooley and W.A. Evans, "Significance of Skeletal Lesions in Infants Resembling those of Traumatic Origin" (1955) 158 **J. Am. Med. Assoc.** 539.
46. That, at any rate, is the estimate of Prof. I.C. Lewis, Professor of Child Health in the University of Tasmania.
47. J. Stark, "The Battered Child — Does Britain Need a Reporting Law" (1969) **Public Law** 48 p.50.
48. **Child Abuse Legislation — Analysis of Reporting Law in the United States** (1966).
49. "The Battered Baby Problem" (1967) 3 **Royal Soc. of Health J.** 168.
50. J. Renvoize, **Children in Danger** (1974) p.50.
51. J.G. Howells, **Remember Maria** (1974) p.23.
52. C. Pollock and B. Steel, "A Therapeutic Approach to the Parents" in C.H. Kempe and R.E. Helfer, **Helping the Battered Child and his Family** (1972) 3 p.4.
53. Op. cit. p.66.
54. See, particularly, Howells op. cit. Renvoize op. cit. pp.202-207, O.M. Stone, "Hard Cases and New Law for Children in England and Wales" (1974) 8 Fam. L.Q. 351 pp.368-371.
55. loc. cit. p.369.
56. Op. cit p.87.
57. M.D.A. Freeman, "Child Law at the Crossroads" (1974) 27 **C.L.P.** 165 p.179.
58. Op. cit. p.87.
59. Op. cit. p.88.
60. (1970) A.C. 668.
61. (1971) A.C. 682.
62. (1971) 1 W.L.R. 1227.
63. **Social Workers, Their Clients and the Law** (1974).
64. **The Legal Context of Social Work** (1975).
65. See, for instance, J. Terry, **A Guide to the Children Act 1975** (1976) and B. Hoggett, **Mental Health** (1976).
66. loc. cit. p.179.
67. C. King, **Preventive Child Welfare: The Feasibility of Early Intervention** (1971) pp.22-49.
68. Op. cit. p.144.
69. Op. cit. p.145.
70. Op. cit. pp.136-140.
71. loc. cit. p.180.
72. Often, for instance, the wrong conclusions may be drawn from facts. See the example quoted by Renvoize (loc. cit. p.137).
73. H.K. Bevan, **Child Protection and the Law** (1970) p.10.
74. B.G. Fraser, "A Pragmatic Alternative to Current Legislative Approaches to Child Abuse" (1974) 12 **Am. Crim. L.R.** 103.
75. R.E. Helfer, "The Center for the Study of Abused and Neglected Children" in C.H. Kempe and R.E. Helfer, **Helping the Battered Child and His Family** (1972) p.285.
76. See, for example, M. Paulson, G. Parker and M. Adelman "Child Abuse Reporting Laws — Some Legislative History" (1966) 34 **George Washington L.R.** 482.
77. See Stark loc. cit. pp. 51-52.
78. **Child Protection Act** 1974 s.8 (3).
79. Created by s.3 of the Act.
80. **Child Protection Act** 1974 s.10 (1), (2).
81. For further discussion on the role of the Family Court see Frank Bates, "A Family Court in Australia — Its Implications for Lawyers and Legal Education" (1975) 9 **The Law Teacher** 18.
82. "On Becoming a Family" in C.C. Barbeau, **Future of the Family** (1971) 57 p.57.