Family Law Is Economic Policy: How Legal Risk and Redistribution Can Damage New Zealand's Future

Family law does not merely resolve private disputes. It shapes the incentives, trust and human capital on which national prosperity depends.

This article is a response to the recent University of Auckland piece, "Relationship property law needs urgent reform – researchers", which reports Professor Mark Henaghan's view that New Zealand's relationship property law should be reformed because primary caregivers, usually mothers, and children are often worse off after separation.[1]

That concern is legitimate. Separation can cause serious hardship, particularly where children are involved and one parent has carried a greater share of day-to-day caregiving. Children should not be casually uprooted from their homes, schools, support networks and sense of stability, and a parent who has made real caregiving sacrifices should not be ignored. Any serious family-law system must take these issues into account.

That is precisely why the economic reasoning also needs to be serious. Family law is not only law; it is also economic policy. It affects incentives to work, save, invest, buy property, form relationships, have children, build businesses and remain in New Zealand. As someone with training in economics, I was surprised by the economic incompleteness of the argument. It appears to make a familiar mistake: identifying post-separation disadvantage and treating stronger redistribution as the obvious answer. That may sound compassionate, but it is not serious economic analysis.

Economic coercion does not preserve the same productive behaviour and merely redirect the proceeds. It changes behaviour: first compliance, then avoidance, then concealment, then lower effort, lower investment, higher enforcement costs and eventual exit. In other words, the law does not merely divide resources after separation; it changes the behaviour that determines whether those resources are created in the first place.

That is why the proposed direction is not merely questionable, but potentially dangerous. If family law makes property ownership, productive work and long-term commitment more legally hazardous, rational people will respond by reducing their exposure: committing less, trusting less, structuring assets defensively, keeping income less visible, avoiding shared property, or avoiding family formation altogether. These are not incidental behavioural changes. They are the erosion of the very economic foundations on which stable families depend. A family-law system that weakens work, trust, investment, property ownership and long-term cooperation does not protect families in the long run. It undermines them, and it damages the country's future with them.

This reflects a broader problem in family-law debate. Lawyers and social-policy advocates are often skilled at identifying hardship, vulnerability and legal unfairness, but those skills are not the same as economic competence. Observing that one group is worse off after separation does not prove that stronger redistribution is the correct policy response. That conclusion requires analysis of incentives, behavioural responses, enforcement costs, capital formation, labour supply and long-term national productivity.

The issue is not whether vulnerable people should be protected. They should. The issue is whether family law should protect them by expanding a redistribution model that may damage the very behaviours on which stable families and national prosperity depend.

The correct direction of reform is the opposite: clearer rules, stronger respect for private property, greater transparency before commitment, and a deliberate effort to preserve incentives to work, invest and form families.

The Hidden Contract Nobody Signs

There is also a serious informed-consent problem in family law. In most areas of economic life, major obligations require clear disclosure. A person taking a mortgage, signing a loan or entering a commercial contract is warned about risks, liabilities and consequences. But a person entering a marriage, or simply drifting into a de facto relationship, can acquire enormous legal exposure without any comparable warning.

That is extraordinary. A person may face consequences as serious as the division of a home, savings, business value, retirement assets and future income, yet there is often no signed acknowledgement, no compulsory disclosure, and no clear moment at which the state says: these are the legal and financial consequences of what you are doing. In any other financial context, this would look like a defective disclosure regime. The state would not tolerate a bank, insurer or lender imposing major liabilities without clear warning. Yet in family law the state itself allows legal risk to accumulate silently, then arrives only after separation to divide property and enforce obligations. [2, 3]

This is not informed consent in any meaningful sense. If family law imposes major economic obligations, people should be told clearly before those obligations arise. Real reform should therefore require greater transparency before commitment, clearer default rules, and stronger protection of private property created before or outside the relationship.

Marriage statistics are not a perfect measure of family law's success, because marriage rates are shaped by many factors. But the decline in marriage is still a warning signal. If fewer people are willing to enter legally exposed family commitments, policymakers should ask whether the law is making commitment too uncertain, too costly or too dangerous. [4, 5]

Spousal Maintenance: Turning Relationships into Private Welfare

Spousal maintenance raises an even deeper economic question. If two adults separate, why should one remain a private welfare system for the other, except in narrow and clearly justified transitional circumstances? A former spouse is not a dependent child, and family law should be careful not to treat one adult as the post-relationship welfare state for another. If the argument is that an adult cannot support themselves after separation, that is a social-policy problem, not automatically a reason to impose an open-ended private tax on another adult.

The business analogy makes the problem clearer. If hiring someone meant that an employer might remain financially responsible for that person long after the employment relationship ended, employment would become a financial trap and many businesses simply could not survive on such terms. The same logic applies to family formation: if entering a relationship can place a person on a long-term financial hook to another independent adult after the relationship ends, rational people will become more cautious about entering relationships at all.

The Selective Concern for Living Standards

The same problem appears in the way living standards are discussed. In debates about spousal maintenance, it is often said that one former partner should not suffer a major fall in living standard after separation. But the concern is rarely applied with equal force to the other side. When the paying party's living standard falls because property is divided, savings are depleted, debt is taken on, support obligations are imposed, legal costs accumulate, or housing must be rebuilt from a reduced asset base, that loss is often treated as normal, invisible or simply the cost of being the payer.

That is not neutral policy analysis. If living standards matter, they must matter for both parties. The law cannot credibly present itself as fair while treating one adult's post-separation hardship as a social problem and the other adult's hardship as an enforcement target. A system that protects one household by destabilising the other may not protect families at all; it may simply create two weaker households instead of one.

Child Support and Command Economics

Child support is usually defended as a simple moral proposition: children need support, and parents should contribute. At that level, the principle is hard to dispute. The problem is the machinery built around it. Modern child-support systems often resemble command economics: formulas, assessments, compulsory collection, penalties, surveillance of income, international enforcement and an expanding bureaucracy designed to extract payments from the person identified as liable. [6]

The irony is that this machinery often becomes most aggressive after the same legal system has restricted the paying parent's practical role in the child's life. Reducing a parent's time, authority and caregiving role while preserving full financial liability is not only economically questionable. It is morally distorted.

Child support also needs to be understood for what it economically resembles: a targeted tax. Like any tax, it may operate tolerably when people regard it as legitimate and proportionate. But when a tax is experienced as unfair, people do not simply keep producing as before and calmly hand over the money. Productive effort is displaced by avoidance behaviour, income minimisation, disputes, administrative reviews and legal conflict, while the state spends resources on assessment, monitoring, penalties and collection. These are compliance costs, administrative costs and deadweight losses. The result is not merely a transfer from one person to another, but wider economic damage:

both the individual and the state spend resources fighting over extraction instead of creating real value.

Milton Friedman famously joked that if the government were put in charge of the Sahara Desert, in five years there would be a shortage of sand. The point was about the extraordinary economic inefficiency of command-and-control systems. Such systems rely on formulas, classifications, enforcement powers and bureaucratic judgment, but they are usually expensive, rigid and poorly informed. They may perform the formal task assigned to them, but often at a much higher economic cost than policymakers admit, while distorting incentives and diverting resources away from productive activity.

Child-support policy risks the same error. Children should be supported, but a system that separates financial obligation from real parental participation, then relies heavily on formulas and bureaucratic collection, can become a drag on economic development in its own right: higher administrative costs, distorted work incentives, lower productivity and long-term damage to the economic base from which children are supposed to be supported.

Reproductive Autonomy and the One-Sided Exit

Child support also raises a deeper question of reproductive autonomy. Modern law strongly recognises that a woman should not be forced into pregnancy or motherhood against her will. But there is no comparable legal exit for men. If a man does not want to become a father, the law generally treats that as irrelevant once a child is born, even where conception involved deception, contraceptive sabotage, or non-consensual use of genetic material. Cases such as Phillips v Irons show that this is not merely theoretical. [7]

One possible fairer model would be a formal financial and legal opt-out: a strict, written and irreversible election available within a defined period after the man receives reliable notice, or confirmation, that he is being treated as the legal father. That period should be broadly comparable to the period in which the woman has a meaningful opportunity to make her own reproductive decision. If exercised, the man would lose all parental rights as well as future financial obligations.

This is not only a moral inconsistency. It is also an economic one. Legal systems allocate risk. If one party has meaningful reproductive choice while the other is assigned irreversible financial liability regardless of deception, consent or intention, the law changes the risk profile of intimacy itself. Rational people respond to legal risk. They become more cautious, less trusting, more defensive and less willing to form relationships where a private decision by another person can create decades of compulsory financial exposure.

This is also where much equality rhetoric becomes selective. If reproductive autonomy is fundamental, it cannot mean autonomy for one sex and compulsory lifelong financial responsibility for the other. If rights are to be equal, then obligations and exit options must at least be discussed honestly. Otherwise, the language of equality becomes one-sided: choice for one party, enforcement against the other.

A family-law system that ignores this asymmetry does not merely enforce responsibility. It increases the perceived legal and financial risk of family formation, especially for men. Rational people respond to risk: they commit less, protect themselves more defensively, delay or avoid children, and reduce exposure to relationships that may create decades of compulsory liability. That is an economic problem, because family formation is part of the infrastructure from which future labour supply, human capital and national prosperity are built.

Selective Equality and Economic Trust

This selective approach to equality is not limited to family law. In criminal justice, for example, official data often show more lenient outcomes for women than for men. The United States Sentencing Commission found that, across federal cases from 2017 to 2021, females received sentences 29.2 percent shorter than males on average, were 39.6 percent more likely to receive probation, and received incarceration terms 11.3 percent shorter when imprisonment was imposed. [8] In England and Wales, Ministry of Justice statistics reported that females were 28 percent less likely than males to receive immediate custody for indictable offences in 2023. [9]

These figures do not prove that every individual case is unfair, and sentencing involves many variables. But they do show why equality rhetoric should be treated carefully. A society cannot credibly demand equality only when it expands rights, benefits or protections, while avoiding equality when the issue is responsibility, liability or punishment.

Once a system becomes comfortable treating one sex as more vulnerable when benefits are allocated, but more fully responsible when burdens are imposed, equality becomes a tool of redistribution rather than a principle of justice. The result is not only moral unfairness. It is institutional mistrust.

That mistrust has economic consequences. Modern economies depend on investment, and investment depends on confidence that rules will be stable, predictable and fairly applied. People invest money, time, skill, labour and family commitment only when they believe the legal system will not later reinterpret equality as a one-sided claim against them.

A legal culture that overlooks this point misunderstands one of the foundations of modern prosperity. Without confidence in neutral rules, people become defensive. They invest less, commit less, disclose less, protect assets more aggressively and avoid risks that might otherwise create value. Selective equality therefore weakens the trust on which investment, cooperation and long-term economic growth depend.

The Lifespan Gap Treated as Natural

The shorter male lifespan is often treated as a natural or behavioural fact. But the usual explanations - suicide, risk exposure, stress, substance use and reluctance to seek help - should not be treated as proof that male disadvantage is natural or self-inflicted. They may also be symptoms of different social expectations, economic pressure, family-law burdens, isolation, work risks and weaker institutional concern for male suffering.

This is also an economic issue. Modern economies are knowledge economies, and human capital is one of their most important assets. Premature death, suicide, chronic stress, work injury, family breakdown and withdrawal from productive life are not merely private tragedies. They represent the loss of accumulated skill, experience, parenting capacity, enterprise, tax revenue and social contribution. A society that treats male distress as mostly natural, self-inflicted or uninteresting may therefore be ignoring a serious productivity and public-health problem. [10]

This is why Marc Luy's well-known 2003 cloister study matters: by comparing monks and nuns living under unusually similar conditions, it suggested that the biological female survival advantage may be much smaller than the gap observed in general society. That does not deny biology, smoking, alcohol, risk-taking or healthcare behaviour. But it does make one thing clear: the male lifespan gap should not be casually normalised. It should be treated as a serious social and economic warning. [11]

Family law is not the sole cause of male distress, and it would be simplistic to claim that it is. But legal systems that restrict parental relationships, impose financial liabilities, generate stigma, and offer limited institutional sympathy can become part of a wider pressure system. A legal culture that treats this damage as merely private suffering, rather than as the destruction of human capital, is economically blind.

The Family Court Feedback Loop

Family Court processes can also damage human capital by disrupting parenting, work capacity, reputation and productive focus. Interim restrictions can generate a procedural record that reflects the constraints and pressures created by the process itself. A parent's distress, frustration or confusion may then be interpreted not as a predictable response to sudden loss of children, reputation and ordinary family life, but as further evidence of instability or poor insight.

This can create a dangerous feedback loop. Allegations justify interim restrictions; interim restrictions create stress and artificial contact conditions; those conditions are then recorded by supervisors, assessors and agencies as if they reveal ordinary parenting capacity. Professional actors are also expected to produce observations, qualifications and concerns; a report that simply says "everything is fine" is rarely how the system works. The system first changes the environment, then treats the record generated in that environment as evidence.

Child-focused language can intensify the problem. In theory, putting children first sounds unanswerable: their welfare, stability and safety must be central. In practice, however, that language can obscure the fact that one parent's rights and ordinary parental role may be heavily restricted before allegations are fully tested. The issue is then framed as protecting the child's stability, while the loss of the child's relationship with the restricted parent becomes less visible.

Time is the hidden factor in this process. Months of delay are not neutral in children's cases, especially for very young children. A few months may seem administratively ordinary to adults, lawyers and courts, but for a young child it can represent a major part of lived experience. Delay can alter routines, attachments, expectations and the child's sense of what is normal. By the time the system asks what arrangement is stable, the process may already have created the answer.

The burden is therefore not symmetrical. The parent with day-to-day care is assessed in a natural environment, while the restricted parent is assessed under artificial conditions: limited time, supervision, stress, delay and the stigma of being treated as a risk. Police and agency records are also not neutral facts; they are often produced through rapid triage, incomplete information and risk frameworks that may carry assumptions about victim and aggressor roles.

Family Violence Allegations and One-Way Incentives

Family violence is real, and the law must be able to act quickly where there is genuine danger. The problem is a system in which allegations can produce immediate and powerful advantages, while false, reckless or strategic allegations often carry little practical accountability.

A family-violence allegation can quickly change the whole terrain of a family dispute: contact with children, occupation of the home, police records, supervised contact, the interim parenting status quo, legal aid, benefits, emergency accommodation, immigration pathways, early divorce options, and bargaining position in property or parenting disputes. [12, 13, 14] These protections may be necessary for genuine victims, but they also create serious incentive risks. The benefits can be substantial, immediate and life-changing, while responsibility for system abuse or false claims is often minimal.

The economic cost is also large. A single allegation can activate police, lawyers, courts, supervisors, report writers, social services, immigration officials, benefit agencies and enforcement systems. Even if allegations are later unproven, the accused person may lose work capacity, income, reputation, housing stability, parenting time and years of productive focus. Months of delay can then turn an emergency arrangement into apparent stability, even if it began from untested allegations.

This is politically difficult to discuss because any criticism is easily misrepresented as hostility to victims. But a safety-focused system becomes dangerous if it creates strong rewards for allegations, serious consequences for the accused, and weak consequences where allegations later prove false or strategically exaggerated.

Victims should be protected. The issue is whether family law can remain credible if one person's rights, reputation, economic life and relationship with children can be restricted for months on untested allegations, while the person making false or reckless allegations faces little meaningful risk and may gain immediate advantages. A system that ignores this imbalance creates incentives for misuse, consumes economic resources, damages productive lives, and ultimately harms both innocent parents and genuine victims.

Family Law as a Drag on National Prosperity

The deeper problem is that modern family law increasingly resembles a command-and-redistribution system. It does not merely resolve private disputes. It classifies property, reallocates assets, imposes support obligations, monitors income, enforces payments and expands bureaucratic control over family breakdown. In economic terms, this is not a neutral legal framework. It is a powerful redistributive system.

Command-and-redistribution systems are notorious for their economic inefficiency. They create bureaucracy, compliance costs, enforcement costs, avoidance behaviour and distorted incentives, while weakening the motivation to work, save, invest, take risks, build property and form long-term commitments. The more aggressively such a system redistributes, the more rational people spend energy protecting themselves from it rather than creating new value.

This is the lesson behind the Laffer Curve, stated simply. If a tax rate is zero, the state collects nothing. If a tax rate is pushed too high, people change their behaviour: they work less, hide income, move capital, leave, or stop creating taxable value. Revenue does not rise proportionally with coercion. At some point, more extraction produces less real economic activity. [15]

Family law has its own version of this problem. If the legal cost of commitment becomes too high, people will commit less. If property becomes too exposed, people will invest less openly. If income becomes a target, people will reduce visible income or avoid risk. If family formation becomes a financial trap, fewer people will enter it willingly.

This is why the analogy with collectivist economic systems is relevant. The issue is not rhetoric; it is incentives. Command systems assume that productive behaviour will continue after the state changes the reward structure. History shows the opposite. Highly coercive redistributive systems become economically stagnant, then brittle, and eventually collapse because they destroy the incentives, trust and productive energy on which they depend. That lesson has been demonstrated repeatedly. When people believe the system treats them mainly as a source of extraction, they reduce production, protect themselves, or exit.

A country cannot build its future on that basis. Family law that overuses redistribution may appear compassionate in individual cases, but at scale it becomes an economic brake: less trust, less investment, less property formation, less family formation, higher enforcement costs and lower national productivity.

The China Paradox: Property Rights Inside a Communist System

China offers a paradoxical example. This article has criticised command-and-redistribution systems as economically inefficient, yet one of the more interesting recent developments comes from a formally communist country. China's economic breakthrough did not come from classical communist economics; it came from moving away from it in practice, allowing markets, investment, enterprise and property incentives to play a much larger role. Now, facing serious demographic pressure, population decline and an ageing society, China appears to be taking parts of family law in a more economically disciplined direction.

The 2025 judicial interpretation of China's Civil Code on marriage and family disputes is notable because it gives greater weight to contribution, source of funds, title, investment and compensation rather than treating family property as something to be redistributed mechanically. In cohabitation disputes, for example, individually earned income and individual investment returns generally remain with the person who earned them, while jointly acquired property is divided with reference to each party's contribution, alongside other relevant factors. [16] The logic is not perfect, and only time will show how it works in practice, but the economic direction is clear: protect investment, recognise contribution, and reduce the idea that relationship breakdown should automatically become an equal confiscation event.

That is the paradox. A country still governed by a communist party may be moving, at least in this area, toward a more property-conscious and incentive-aware family-law model than many Western systems. The point is not that New Zealand should copy China. The point is narrower and more uncomfortable: even China appears to recognise that family law cannot ignore contribution, investment, property rights and incentives without damaging family formation itself.

Why New Zealand Cannot Afford This Mistake

That lesson matters especially for New Zealand. A very large, highly diversified economy may absorb bad legal incentives for longer before the damage becomes obvious. New Zealand has much less room for error. It is a small, distant economy operating in a global market where scale, innovation, capital formation and talent retention are already difficult. The OECD notes that New Zealand's income-per-capita gap is linked to lower labour productivity, lower capital stock per worker, weak investment in innovation, limited competition, small market size and distance from major economies. [17] The Productivity Commission also found that New Zealand's frontier firms lag up to 45 percent behind comparable high-performing small advanced economies, and that the country's small domestic market and distant location make it difficult and risky for firms to reach world-class scale. [18]

That is why family law should not be treated as a closed moral universe for lawyers alone. It is part of the country's economic architecture. If it discourages work, property ownership, enterprise, commitment and family formation, it does not merely redistribute private wealth after separation. It weakens the future productive capacity of the country.

The correct reform agenda is therefore the opposite of the one implied by calls for more redistribution. The basic lesson of economic development is clear: growth requires secure property rights, predictable rules and confidence that investment will not be confiscated after it has been made. People work, save, build, invest and take risks when they can reasonably expect a connection between contribution and reward. Family law should apply the same logic. If New Zealand wants stronger families and a stronger economy, it should reduce uncertainty, protect pre-existing and personally created property, make legal consequences clear before commitment, and preserve a visible link between contribution, risk and entitlement.

The answer is not more coercion, more redistribution and more post-separation extraction. It is a clearer, more predictable and more property-respecting framework in which people can commit without feeling that commitment itself has become an economic trap.

Sources

[1]. University of Auckland – Relationship property law needs urgent reform – researchers https://www.auckland.ac.nz/en/news/2026/07/01/relationship-property-law-needs-urgent-reform---researchers.html

[2]. New Zealand Ministry of Justice – Understand relationship property https://www.justice.govt.nz/family/relationship-property/understand-relationship-property/

[3]. Community Law – How the Property (Relationships) Act works https://communitylaw.org.nz/community-law-manual/chapter-12-relationships-and-break-ups/dividing-your-property-when-you-split-up-relationship-property/how-the-property-relationships-act-works/

[4]. Stats NZ – Marriages continue downward trend https://www.stats.govt.nz/news/marriages-continue-downward-trend/

[5]. Stats NZ – Marriages, civil unions, and divorces: Year ended December 2025 https://www.stats.govt.nz/information-releases/marriages-civil-unions-and-divorces-year-ended-december-2025/

[6]. Inland Revenue – How formula assessments work https://www.ird.govt.nz/child-support/types/formula-assessment/how-it-works

[7]. Phillips v. Irons – Quimbee case brief https://www.quimbee.com/cases/phillips-v-irons

[8]. United States Sentencing Commission – 2023 Demographic Differences in Federal Sentencing https://www.ussc.gov/research/research-reports/2023-demographic-differences-federal-sentencing

[9]. UK Ministry of Justice – Statistics on Women and the Criminal Justice System 2023 https://www.gov.uk/government/statistics/women-and-the-criminal-justice-system-2023/statistics-on-women-and-the-criminal-justice-system-2023-html

[10].World Bank – About the Human Capital Project https://www.worldbank.org/en/publication/human-capital/brief/about-hcp

[11].Marc Luy – Causes of Male Excess Mortality: Insights from Cloistered Populations https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1728-4457.2003.00647.x

[12].New Zealand Ministry of Justice – Protection Orders https://www.justice.govt.nz/family/family-violence/court-orders-for-family-violence/protection-orders/

[13].Immigration New Zealand – Victims of Family Violence Resident Visa https://www.immigration.govt.nz/visas/victims-of-family-violence-resident-visa/

[14].Immigration New Zealand – Evidence of family violence for victims of family violence visas https://www.immigration.govt.nz/process-to-apply/once-you-have-a-visa/victims-of-family-violence-visas/evidence-of-family-violence-for-victims-of-family-violence-visas/

[15].Laffer Center – About the Laffer Curve https://laffercenter.org/about/curve/

[16].China Law Translate – Interpretation of the Civil Code, Marriage and Family Section (2) https://www.chinalawtranslate.com/en/21527-2/

[17].OECD – OECD Economic Surveys: New Zealand 2024 https://www.oecd.org/en/publications/oecd-economic-surveys-new-zealand-2024_603809f2-en/full-report/rebalancing-towards-more-inclusive-and-sustainable-growth_52c61382.html

[18].The Treasury New Zealand – New Zealand firms: Reaching for the frontier Productivity Commission inquiry material https://www.treasury.govt.nz/publications/new-zealand-firms-reaching-frontier-productivity-commission-inquiry-material-2019-2021