

INTRODUCTION

Interest in the reform of family law was one of the ways in which the optimism of the Sixties expressed itself in a number of the countries of the Commonwealth. Buoyant economies and a new-found interest in the rights of the individuals who make up the family - in particular children and women - helped to fuel the demand for reform.

In most of these countries, the laws which became the subject of scrutiny seemed remarkably alike. The oddity in this circumstance arose from the fact that the societies to which these laws applied could be very different from each other. The connecting link was the system of English family law which formed their legislative base.

So far as the older dominions were concerned, English settlers had taken their family law with them, and under the English crown it became the basis not only of the law relating to these settlers but of all who came under the jurisdiction of their courts. In the island colonies and those later established in Africa the system of family law was introduced mainly as a result of the policy of successive governments administered through the Colonial Office in Whitehall to introduce so far as was possible a uniform family law in the colonies. This was modelled on the English law at the time that legislation was being drafted, and would be modified only where there were established local customs that the government were prepared to recognise.

In territories like the Caribbean islands where the population was mostly immigrant and from different parts of the world, the legislation introduced would follow closely the English law. Places like India, for example, presented a very different situation. Where there were well-established systems of family law, with the kind of ample scholarship and documentation that existed in India, English family law was only made applicable to the English and to those in the English-governed portions of the country who fell outside the local systems. In Africa where the customary law lacked, for the most part, documentary backing, there was some ambivalence about accepting them fully, and a greater effort was made to introduce English law in the colonies though not in the protectorates.

Even after the achievement of their independence, the influence of English law has remained strong in the countries of the Commonwealth. In part this is because the legislation of pre-independence times continued to be operative. But of equal importance is the fact that English-styled courts and methods of administration and practice had taken root. The influence of English-trained lawyers and judges cannot be discounted, and probably helps to account for the circumstance that law reform - at least in the early stages - seemed to wait upon a lead from England. The earliest to break away were those countries which had established their own schools of law. It is perhaps a not unconnected matter that these were countries with a written federal constitution which meant that constitutional law and practice had to develop independently. Law reform movements are strong in Australia and Canada. Both at any rate in the field of family law, have undertaken reforms well in advance of English law and practice.

Law reform in the more recently independent territories is still very much influenced by developments in England, though there is now discernible a greater willingness to call upon the experience of Australia, Canada and New Zealand.