

SIERRA LEONE

The former colonies and protectorates of Britain in East and West Africa all have the problem of reconciling the legal systems of widely different cultures in their efforts to create stable independent countries. Because of the way in which it was settled, and the manner of its evolution into an independent republic, Sierra Leone is a particularly good place in which to look at the various elements of the problem. The "settlers" of the colony were not Europeans but freed slaves brought back to Africa from the United States, Canada, the Caribbean and England by Britain. These were later joined by other Africans rescued from the slave ships. As a group they had very little in common besides the fact that their origins lay in Africa. Many different tribal and linguistic groups were represented among them. The first group had one important thing in common - they had all been exposed to western culture and Christianity, and not surprisingly these formed the bases of their social and cultural life in their new home. Among the rescued slaves who joined them there were a large number of Muslims, but the dominant group in the colony remained western-oriented, Christianized settlers.

The colony had been established in the coastal area of a region that had a number of well-established tribes and a busy trading life. Relationship between the tribes and the settlers were never easy from the beginning because of doubts about the validity of the agreements under which the colony was established, and the marked differences between their legal, social and cultural institutions. In time trading interests linked the colony to the hinterland, and these considerations were influential in the establishment of the protectorate. No attempt was made to assimilate the social and cultural institutions of the tribes and the legal framework for their functioning to those of the colony.

Today Sierra Leone is an independent country, a Republic within the Commonwealth, with the problem of balancing the interests of three main groups - the tribes, Mende and Temne prominent among them, based mainly in the Provinces, the Creoles, former colonists, based mainly in the Western Area and the growing number of Muslims who are to be found in both areas. Its population has doubled since 1950 and now Creoles number only about 2% of the population. Like other countries with improved health and hospital services and a high birth rate (48.5 per thousand) the age structure of the population is changing. The most recent estimate available (1978) show that those between birth and fourteen years make up 44.5% of the population and the numbers of those 65 and over are growing slowly. It can be expected that this increase in dependants will put some strain on the normal ways of providing for their maintenance and care, and will affect the way families, the main caretakers, function. Education used to be confined mainly to the Creoles. They laid great stress on its importance and valued it for the mobility it afforded them. Since independence great efforts have been made to improve the availability of both primary and secondary education throughout the country. Most progress has been made in the number of girls who now go to school. The rate of adult literacy, low at 7% in 1960, rose to 15% in 1970.

Other social indicators, taken from the UN Statistical Yearbook, 1978, underline the nature of the change that is taking place in Sierra Leone. Transport and communication are the fastest growing sector of the economy. Roads are opening up the hinterland, and there is a slow but steady growth in the numbers of the urban population. The majority of people, about three out of every four, still live in villages, but the improvement in transport and communication has meant more movement around the country. Perhaps as important as transport in the opening up of the country is the growth in the numbers of the urban population. The majority of people, about three out of every four, still live in villages, but the improvement in transport and communication has meant more movement around the country.

In spite of the constitutional and other changes outlined above, Sierra Leone has kept, presumably as a matter of policy, the distinction between the two elements that make up the country - the colonists, mostly Creoles, and the natives. This is set out in the Interpretation Act (No. 8 of 1971) in which the native is defined as "...any person who is a member of a race, tribe or community settled in Sierra Leone (or the territories adjacent thereto), other than a race, tribe or community (a) which is of European or Asiatic or American origin; (b) whose principal place of settlement is the Western Area." The purpose of the definition is to make clear what system of law applies according to whether the person concerned is a native or a non-native. There are exceptions to this general rule. There can be agreement between the parties, for instance in commercial matters, as to what law should apply. There are circumstances not covered by customary law, or where statute has overridden custom. And in family matters, Muslims are governed by the law of Islam, and in this succession is included. If it were as easy as the legal definition suggests to determine who was a native or a non-native, the problem of having two widely-differing legal systems working side by side might be manageable. But there has been a good deal of movement throughout the country, inter-marriage between the different groups and some assimilation of cultural habits through contact and education. Everything indicates that this trend is likely to continue and to grow. In addition a political system based on the vote is bound to blur group distinctions further.

Using the law to maintain the distinction between different groups of Sierra Leoneans may be one way of dealing with the search for a national identity which seems to bother so many ex-colonial territories who find disparate groups within their border. The old dogma of the superiority of western and Christian ways brought to Africa by the Europeans has been displaced by a growth in pride in native culture and the need to assert it. To put this in perspective in Sierra Leone it ought to be remembered that the organisation of chiefs and chiefdoms which took shape during the Protectorate and which now participate in the constitutional arrangements in Sierra Leone, were in part a creation of the British. Administrative needs require that some kind of organisation be imposed on a country. It was the policy of the British in the Protectorate to rule through chiefs, as the heads of powerful household or descent groups came increasingly to be designated. The most powerful became known as paramount chiefs

There were in all about one hundred and fifty chiefs. These had wide-ranging responsibilities, which included the welfare of kin and subject, management of their lands, the settlement of disputes and the maintenance of peace and order. Much of their wealth came from the produce of the agricultural labour of their kin and subjects, tribute that might be paid to them and fees for hearing disputes. The economic base of their power began to be seriously eroded when in 1937 chiefdom treasuries were established. Both the receipt of tribute and the forced agricultural labour of subjects were forbidden. Instead chiefs received fixed salaries paid by the government. In the same year a Native Administration plan was introduced setting up chiefdom councils with the job of electing the paramount chief. Increasing efficiency in the collection of taxes was probably the main reason for the changes.

After the Second World War, preparation for self-government in a number of colonies became a significant ingredient in the policy of the British government. In Sierra Leone this would mean bringing colony and protectorate under one government. An attempt to do this in 1947 was opposed by the Creoles and not particularly welcomed by the Natives. But by 1951 this had been achieved. Political parties had by this time begun to take shape. For a constitution fashioned on democratic lines to function properly, political parties need a mass base. It could have been expected that this would have had the effect of undermining the power of the chiefs, but this has not happened. Their place in the structure of government has been preserved by the constitution. Twelve seats in the unitary House of Representatives are reserved for them and elections for those seats are actively and vigorously contested. Party lines have not, as might have been expected, closely followed tribal divisions. In part this has been due to the influence of the men's secret society, Poro, the membership of which cuts across ethnic boundaries. The women's secret society, Bundu, does also exercise some political influence, particularly in the support

of women chiefs seeking election, but its main area of influence lies elsewhere and it will be dealt with later in the section of family patterns and functioning.

The only real rift in inter-ethnic relations is between the Creoles the dominant group among the non-natives, and the natives of the Provinces. The Creoles have from the beginning regarded themselves as an outpost of Western civilization in Sierra Leone. Educated, Christian, monogamously married, they felt that theirs was a superior way of life, to be emulated by others. With the coming of self-rule and independence, that position of dominance was lost. They did not, as they expected, inherit the place of the British, and accommodation with the new political parties and governments has not been easy. They still however dominate the professions and much of the civil service, but in time this too will be lessened as education spreads beyond the Chiefs' sons to others in the Provinces. Creoles, by their ability to function in a modern state still have a great deal of influence, and it remains to be seen how great an effect this will have on the educated young emerging from the Provinces.

It can be expected that increased contact between the various groups in the country brought about the economic, political and social changes will result in the modification of their social and cultural patterns of life and thought. It is unlikely that the modifications will all be in one direction. Studies that have been done on various groups within Sierra Leone indicate that this modification is already taking place. The area of family law and family law functioning is one that will most certainly be affected increasingly in the future.

Family Patterns and Family Functioning

Patterns in family organisation and functioning in Sierra Leone divide into three main groups - the indigenous, the Christian and the Muslim. The first group is by far the largest, but because it lacks firm legal underpinning it is the most vulnerable to change. The Christian group is the smallest, but has the advantage of a firm legal basis. Islamic law, as locally interpreted, is applicable to Muslims insofar as marriage, divorce and devolution of intestate property is concerned.

The functioning of the family in the indigenous group is governed by custom, and as such it is likely to vary between tribes, and to be modified in response to changes in circumstances. In countries where, as here, the basis of economic life is subsistence agriculture, large kin groups have evolved along with the practice of polygamy. The kin group is tightly knit, owning land in common and having mutual rights, duties and obligations. As between the individual and the group, it is the interest of the group that is paramount. The way in which marriages traditionally have been contracted reflects this. The most usual type of marriage, that of a virgin girl, is arranged as a result of agreement between families, the negotiation being normally undertaken by male family members on both sides. The bride price - often referred to as dowry - which is agreed upon is distributed between members of the bride's family. This is liable to be repaid to the family of the groom if the marriage breaks down in circumstances not attributable to the fault of the groom or his family, a powerful incentive for the bride's family to help in the settlement of marital disputes. Marriage according to custom, being an alliance between families rather than a contract between individuals, has to be treated in a basically different way from monogamous western-style marriage.

The pattern of preparation for marriage and women's roles within marriage are worth looking at in some detail, because it is here that change is already beginning to take place and further changes can be expected. This is likely to result in a change in the nature of customary marriage itself. The women's secret society - Bundu - has already been referred to above. The main object of its existence is the preparation of young girls to become wives and mothers. This involves what MacCormack calls "the characteristic surgery" of a Bundu woman, reputed to increase fertility, as well as preparing the girls to work co-operatively with the other women in their husbands' households. The choice of group in which a girl is initiated may enhance her marriage prospects as well as provide

her with fellowship throughout her life. It can be expected that over time, as women become more exposed to the educational programmes being promoted by the state, their attitudes towards early marriage and initiation surgery will change.

Already the economic roles that women assume are changing. Women in the rural areas have always been very active as agricultural workers. Over the last twenty years, the percentage of the labour force in agriculture has fallen from 77% to around 67%. The number of women in agriculture has fallen rather more than this, and this seems to bear out the view that women are rather more reluctant than they used to be to work in the fields. It is, however, still the responsibility of the head wife - not necessarily the first wife - to organise the household, usually of kin, co-wives, clients and wards, into an efficient agricultural work force. She also oversees the management of the household and the training of junior wives and wards who may be sent for this purpose. But women have been moving into other occupations beside agriculture. Some have seized the opportunity offered by the growing change to a cash economy in Sierra Leone to become traders, jobs needing a good deal of individual initiative as well as physical mobility. This development fits uneasily into a social system which calls for women to be subservient to the wishes of their husbands and places some emphasis on the need for male protection. In addition, employment opportunities in both the urban areas and in mining have attracted both men and women causing some amount of migration and putting some strains on the functioning of the traditional family group.

The emergence of man-woman relationships other than those embedded in the traditional family system has been noted. Some of these have acquired the status of marriage. One of these described by Harrell-Bond and Rijnsdorp is the stranger-permit marriage. During the years of the diamond boom, the stranger permit was used by chiefdoms in the area to check migration into them. From this evolved the practice that a man might obtain from a chief a stranger permit for a woman to live with him as his wife. The chief's permit - which has to be paid for - confers some status on the union, giving the man immunity from any suit for adultery if the woman had been previously married. This seems to indicate that among the migrant group there is a break with the dowry system and the involvement of family members. The same research report notes as "not uncommon" a type of marriage arrangement called a "pledge marriage". The groom gives no dowry, but receives his bride as part of a loan transaction with her father. He expects to be repaid but will not press his claim. Again the significance of dowry, the key element in the making of a traditional marriage, is reduced.

In the traditional view, prestige is equated with the size of household. Wives and children add to a man's consequence. It is taken for granted that children belong to the father and a separated or divorced wife accepts that this is so. Where the traditional system is beginning to break down, the women are able to provide economically for themselves, custody becomes a matter of importance. This is particularly so as women have shown themselves ready to invest in the education and training of their children as a hedge against destitution in their old age.

The system of land tenure in the Provinces is a powerful factor in the continuing strength of the traditional family pattern of life there. Land in the Provinces is vested by law in the chiefs and the chiefdom councils for and on behalf of the families in their area. Family land is held in common, and it cannot be willed away or alienated, though portions of it may be leased to others in the course of management of the family's resources. But the individualism that tends to creep in with the growth of the cash economy, migration and the growing demands of education and training for family members all put strains on the discipline which is needed for a communal property holding system to function. In addition, the government policy of developing agriculture into a revenue-earning resource means that some changes are inevitable, and these are likely to result in some adjustments in the way the traditional family operates.

The Muslim family has features in common with the indigenous. It is polygamous with arranged marriages involving the families of the spouses.

But they differ in certain essential respects, though the differences tend to be blurred because many tribes have embraced the religion of Islam without giving up their tribal customs. The matter of the permitted number of wives is a case in point. Islam permits a man to marry up to four wives, but lays some stress on there being the ability to provide for them and obtaining the agreement of the first wife. Under customary law there are none of these restrictions. Dowry in both is a crucial element in the making of a marriage, but the function it serves in each is different. In the customary marriage, the parties are not regarded as married until the whole of the dowry (really bride-price) is paid. When it is paid in instalments, it is the last instalment that is important. Though the parties may be living together, the marriage is not deemed to be complete until that is paid. In Islamic marriage, the payment of dowry is an obligation imposed by law. The amount and time of payment is left to the parties to decide. It is intended to be for the benefit of the wife, in a sense as a kind of insurance in case of need. That, at least, is the theory, the practice may be somewhat different.

Those professing the Muslim religion form about forty per cent of the population. It is not clear, however, how many of these can claim the law of Islam as their personal law. This is a topic which will be considered later when looking at the different family law regimes and the persons to whom they are applicable. It need only be noted here that the Mohammedan Marriage Ordinance (cap. 96, Laws of S.L. 1960) provides the Muslim family with the protection of a statutory base.

Only about seven per cent of the population are Christians. These are mainly Creoles and other non-natives, living for the most part in Freetown and the Western Area. Harrell-Bond in her study of marriage among the professional classes in Sierra Leone has remarked that "Being Christian, educated and married under statutory law is strongly associated with prestige in Creole society." Marriage under the provisions of the Christian Marriage Act is monogamous. An area of doubt was removed in 1965 when a customary marriage was recognised as a marriage under this Act for those married or seeking to be married according to its provisions. The way families function in this group is very like the way they functioned a couple of generations ago in Britain. The consent of parents to a marriage is only needed if the parties wishing to marry are under the age of twenty-one. It is the responsibility of the husband to provide a home for and maintain his wife and children. Some obligation to assist relatives is acknowledged but it is more or less taken for granted that parents, especially mothers, have a claim to assistance. Great importance is attached to education. Husbands and wives are prepared to accept long separations from each other in the interest of one or other of them getting a professional qualification or training. Schooling for children is an important concern, and aid to relatives often takes the form of assisting them to get an education.

There is a good deal of evidence to suggest that monogamy, insofar as most men in this group are concerned, does not mean fidelity to one's marriage partner. While women jealously guard their status as statutorily married wives, men keep other partners, sometimes families, outside the union. Perhaps the overwhelming presence of polygamy in the country has its effect. Virility seems to be equated with the number of partners and children that a man has. Though the law makes adultery a ground for divorce, resort to this remedy is in fact very infrequent. Great efforts are made by family members to mediate marital disputes, and lawyers as well as courts try to reconcile couples.

In a situation where marriage confers status on a woman, and where the matrimonial property regime heavily favours the husband, women will not lightly seek divorce. But they do attempt to safeguard themselves financially and economically. Among the professional class where both husband and wife work, Harrell-Bond reports that it is fairly common practice for them to keep their financial affairs separate. General acceptance of the dominant role of the father in the household is also reflected in the attitude towards the custody of children after marital break-up. It tends to be accepted that the father has the superior claim, though if the matter comes before the British-style courts of the

Western Area for decision, the welfare of the child is deemed to be the overriding consideration in determining who shall have custody. Though divorce is not often resorted to, the predilection of men for keeping outside partners during marriage means that the most frequent marital problem dealt with by the caseworkers of the Ministry of Social Welfare is the failure of husbands to maintain their wives and children.

Before concluding this section on the functioning of the various family patterns in Sierra Leone, there should be some mention of those families who do not fit squarely into any one of these groups. A good deal of intermarriage takes place, not only between members of the various tribes, but between native and Creole or other non-native. Many may choose to marry under the regime of one of the partners, but for those who do not wish to marry under any of the regimes described above, there is the alternative of a civil marriage under the provisions of the Civil Marriage Ordinance. For some, this may have some drawbacks too. While providing for a statutory marriage, it does not, like the Christian Marriage Ordinance, insist that it be monogamous. The history of the Act as described by Morris makes it clear that this is deliberate. A previous customary marriage does not prevent a civil marriage, nor does such a marriage prevent a subsequent customary one. It is a kind of halfway house that may mean more to a woman than a man. It at least has the benefit of certainty and rather more status. For a non-Christian couple wishing to marry monogamously, or for a couple customarily married but wishing to convert their marriage into a monogamous one, it also provides a way. It is an instrument flexible enough to suit varying needs.

Indications of a trend towards monogamy has been noted by some researchers. This has variously been seen as a threat to the survival of customary patterns of life, as showing the superiority of the model of the western family and the like. However, the comment of Zabel in her article on the Gold Coast and Lagos Marriage Ordinance is worth bearing in mind. She writes, "... the decision to contract a monogamous marriage may be influenced by various economic and social pressures unrelated to the celebrants' attitude towards customary traditions."

Family Law

This outline of the three main systems of family functioning would seem to indicate that each ought to be governed by its own system of law, and that there would be clear rules about how conflicts of law arising from marriage across group lines should be handled. This is in fact not so. The theory is that the system of family law applicable is determined by the "personal law" of the individuals concerned. When people marry it works like this. Under customary law, a woman becomes subject to the personal law regime of her husband, losing her own if she belonged to a different group or tribe. If a marriage takes place under the Mohammedan Marriage Act both parties are governed by Islamic law. Marriage under the Civil or the Christian Marriage Acts leaves the personal law of the parties unchanged. The important factor in determining their "personal law" is whether they are natives or non-natives.

The continuing legal differentiation between native and non-native appears to be a matter of government policy. A native is defined in law as "... any person who is a member of a race, tribe or community settled in Sierra Leone (or the territories adjacent thereto), other than a race, tribe or community (a) which is of European or Asiatic or American origin; (b) whose principal place of settlement is the Western Area." It is, then, membership of a group, other than those excluded by the definition, as well as a group's principal place of settlement which defines a person's status as a native. Is membership dependent on ethnic origin? It is not clear. In a country in which there is a good deal of internal movement and migration, some intermarriage and no universal system of registration of births, ethnic origin may not be always easy to prove. Even when births are registered, the absence of any information on ethnic origin in the certificate may make it less than conclusive. Is membership to be deduced from the way one conducts one's life? Earlier in this century, the law recognised that a person could change his status from native to non-native, where he lived and his way of life being the critical factors.

It may be presumed that the reverse could also take place unless the customary laws of any tribe or group forbade it. Though there is no longer any explicit recognition of the possibility of change between the categories of native and non-native, certainty as to the application of these categories would be greatly aided by some rules about what is meant by membership, in much the same way as rules have been developed by which a person's domicile is determined.

Even when it is clear what category a person falls into, religion may be a complicating factor in determining the personal law of an individual. For example, many natives have embraced the Muslim faith. The personal law of Muslims for family law purposes is prescribed by the Mohammedan Marriage Act. For a native Muslim living in the Western Area, it is likely that Islamic law will be taken to apply to matters such as inheritance. But if he lived in the Provinces, the matter would be much more open to doubt. A marriage registered under the provisions for registration in the Mohammedan Marriage Act would seem to make that Act applicable to family matters. If it were not so registered, and if any conclusion can be drawn from decided cases, it appears that facts rather than legal presumptions guide decisions.

The effect of marriage under the Civil and the Christian Marriage Acts is rather different. Parties married under these laws may have rights and obligations arising under them, such as those concerning the maintenance of wives and children, but in matters of inheritance the personal law that applies depends upon whether a person is a native or non-native. If the person is a native, the rules of customary law that are applicable govern the matter; if a non-native the rules of general law apply. General law comprises all enactments in force in Sierra Leone in addition to the provisions of English law and equity as of January 1880 which have not been altered by local statute.

In order to see how the three systems of family law fit together, it is necessary to look at each separately.

Customary Law

There seems to be general agreement among those who have studied the matter that while there are differences in the customary law of the various tribes in the country, there is a marked degree of cultural unity among them. As a result these differences do not present problems of conflict of laws in the Local Courts which administer customary law. Being unrecorded, customary law remains flexible, and this is probably desirable if, as expected, mobility and intermarriage will increase. Attempts to eliminate practices which have come to be seen as undesirable - such as widow inheritance, whereby a widow marries a member of her husband's household in order to keep her place in it, or the prolonged squabbles over the return of dowry when a marriage has broken up - are undertaken through government directives to Chiefs and Chiefdom Councils. The effectiveness of these directives depends upon local action, and whether or not this is taken may depend on the importance attached to these practices locally.

Since there is no code of customary law, and as there is likely to be some variation on particular points between the different tribes and communities, any description of it must necessarily confine itself to those areas in which there is general agreement in practice. Here marriage, the rights and responsibilities arising from it, the ownership and use of property and succession to it within the family will be looked at. As a general principle, it can be said that the interests of the family are more important than those of the individual, and it is in this context that the working of customary law is considered.

The most common marriage is that of a young, unmarried girl who has been initiated into the Bundu society, to a man who may or may not be already married. This is arranged between the families of both parties and involves the payment of dowry which is distributed to the relations of the girl, or some other consideration in lieu of dowry that might be agreed between the parties. The marriage is not valid until the dowry has been paid in full. Betrothals of infants, once common, are now rare.

Indeed, in 1965 there was legislation raising the age of marriage for natives to eighteen years. Since traditionally the onset of puberty signals a readiness for marriage, the fact that the age of puberty seems to be falling, as it is in other countries, to around thirteen years of age, can present something of a problem which no custom has yet evolved to meet.

There is no prohibition against the marriage of divorced women, but divorce does raise questions of the repayment of the dowry received for the earlier marriage. Since the payment of dowry has such a crucial place in the making of a marriage, it seems obvious that its repayment should be seen to mark the end of it. Though negotiations about dowry may be less important in the making of second marriages, the families are still involved, their consent being sought and at least a token payment made to the bride's family.

The type of marriage known as "widow inheritance" has already been referred to. Traditionally, if a woman's husband died, she would be expected to marry a member of his family. She and her children would rank below his other wives and their children, but at least there would be no problem about her continued entitlement to maintenance by the family. The children's claims as family members would not be in dispute. If she refused such remarriage she would be regarded as having cut herself off from the family much as though she had got a divorce, and repayment of the dowry given at her marriage would be sought. Neither "widow inheritance" nor the repayment of dowry in such circumstances is looked upon officially with favour, and attempts have been made to discourage both practices.

Other types of marriages such as the pledge marriage and the stranger-permit marriage have been referred to in the previous section. The pledge marriage, based upon an acknowledgment of indebtedness by the girl's father to the groom or his family, can be said to retain some element of the dowry agreement. It appears to be an accepted custom of long standing. The stranger-permit marriage represents a complete break away from the family rights of marriage-making, and in those parts of the country in which it is recognised, it may have the effect of influencing future developments in marriage practices.

In considering the rights and responsibilities arising out of marriage, it has to be borne in mind that marriage means very different things to men and to women. A man may marry as many women as his means and his inclinations permit, a woman marries one man who has exclusive rights over her. It is the responsibility of the husband to maintain his wife and children so long as they are living with him or in the accommodation he provides for them. It is the duty of the wife to be sexually faithful to her husband and fulfil the household responsibilities expected of her, fitting herself into a family group of his kin and her co-wives and their children. Failure to perform the duties expected of her may lead a husband to return his wife to her family. This may result in a divorce, the consequence of which will be considered under that head. However a wife who has returned to her family, except on such occasions as the birth of her children or for some other recognised event, is no longer entitled to be maintained by her husband. The father is entitled to custody of any children they may have, and as part of his household they are entitled to be maintained by him.

Families are usually involved in the settling of marital disputes when these arise. It is clearly in the interests of the woman's family to preserve the marriage if this is at all possible. If it ends as a result, for example, of her being returned to her family for failure to carry out her duties, or if she runs away or takes a lover, her family become liable to repay the dowry they received for her. In addition, they are once again responsible for her maintenance. Traditionally, the matter is settled between the families, but if there is failure to agree, assistance may be sought from a local headman or chief. With the establishment of Local Courts, a differentiation has arisen between the functions of conciliation and adjudication which used both to belong to the recognised local authority. The adjudication procedure demands kinds and

and standards of proof which may be alien to the spirit in which family negotiations are carried on, and growing recourse to the courts can be expected to result in changes over time in the way families deal with these problems.

As the economy of the Provinces of Sierra Leone changes from a subsistence to a cash economy, so property rights within the family show signs of modification. In the traditional family, property is held in common and used for the maintenance of its members, wards and clients. Any surplus could be disposed of by the head of the household for his own purposes, though usually with the benefit and prestige of the family in mind. In these circumstances a wife's separate property is limited to her clothes, her ornaments and her cooking pots. When demands beyond the level of subsistence, as for example, for the education of children, indicate that new sources of income need to be found, the opportunity is created for wives to engage in trading or other enterprises.

When the earning of money can be seen to be the result of individual rather than co-operative effort, it is much easier to lay claim to it and the items it purchases, and to have that claim upheld. In their research report, Harrell-Bond and Rijnsdorp noted this trend in a number of decided cases (p.38). This would mark a distinct break with the traditional family property regime, and could initiate a whole new approach to the ownership of property acquired during marriage as between husband and wife. Such a matrimonial property regime could make divorce an altogether more contentious matter than it is at present.

The grounds on which a divorce can be obtained reflects the difference in status between men and women in marriage. There are a whole range of reasons for which a man can divorce his wife including, to quote from Harrell-Bond and Rijnsdorp (p.24) "...failure to perform domestic duties, disobedience, desertion, refusal to cohabit, repeated adultery, witchcraft and inability to get along with co-wives." To divorce her husband, a wife must show that he has either treated her with extreme cruelty, failed to support her or committed incest. Other grounds may be permitted in the different native groups within the country, but those cited give a general indication of the grounds for divorce that are socially accepted.

Traditionally, divorce, like marriage, is a family matter. Acceptance by the family of the wife that the marriage, for whatever reason, is over, raises questions of the return of the dowry received for her. If it is the wife who seeks the divorce, the husband has strong grounds for demanding the return of the dowry. If it is he who wants the divorce, he will have to convince her family that she was so at fault that the dowry ought to be repaid. It is not the divorce so much as the claim relating to the return of the dowry that is the really contentious matter. Increasing resort to judicial process to settle these matters has been noted. Registration of divorces, and as a consequence, registration of marriages begin to assume some importance. These court battles can be prolonged and there is much argument as to what expenditure related to the marriage, other than the agreed dowry, the wife's family should repay. By Directive in 1963 the Government sought to lay down rules by which the amount of dowry repayable on divorce could be calculated. But Directives, as pointed out earlier, do not have the force of law unless locally adopted, and response to this one has been small and patchy.

Where families are unable, or unwilling, to make repayment, the woman concerned may take on herself the burden of discharging the debt. If she has not the financial resources to do so, or is unable to find a new husband who will pay it, she may try to raise the money by involving herself in an irregular union. This is highly unlikely to last, and may in time give rise to other problems. These may include getting maintenance for children born of these unions. Circumstances like these tend not to be easily handled by customary law. Help may be sought from Social Welfare agencies, or application may be made for remedies available under statutory law. Women married under customary law may find themselves forced to take the same route to obtain maintenance at least for their children if their husbands fail or neglect to maintain them and do not respond to family pressure. Claims from both groups of women would be made under the

Bastardy Act, since under the provisions of the Married Woman's Maintenance Act, a customary marriage is not recognised. It is interesting to observe that one of the subjects within the original jurisdiction of the Supreme Court is "...to establish the existence or dissolution of any marriage governed by customary law and relating to any claim founded upon such marriage." Presumably a claim for maintenance by a wife on behalf of her children and herself would have to be heard in the Supreme Court, the easier and cheaper remedies of the lower courts not being available to her.

The rules of customary law regarding succession apply to every one who is a native according to the legal definition quoted above. This is intended to apply regardless of religious affiliation - except possibly those whose marriage has been registered under the Mohammedan Marriage Act - and regardless of whether the native may have contracted a marriage under the Civil or Christian Marriage Act. The jurisdiction of the Local Courts in dealing with such matters only covers property within their boundaries. Where a deceased's person's estate includes property outside of this, in the Western Area for example, the administration of such estates would fall within the original jurisdiction of the Supreme Court.

The rules of customary law are based upon differentiating between personal property and family property. The distinctions in English law between real and personal property do not fit these categories precisely, and to try and equate them would confuse the issue. As in other countries where joint family property exists side by side with the personal property owned by individual family members, both kinds of property may include what is known to English law as real property, lands, houses and the like. How it may be disposed of depends not on the nature of the property but who owns it. Family property cannot be disposed of by will, personal property can.

As Sierra Leone changes to a cash economy, it becomes increasingly possible for family members to earn money by individual initiative over and above family requirements. Insofar as there are customary rules about the way such personal property should be disposed of on the death of the owner these indicate that such property should be held in trust for or be for the use of his or her children. It is possible to direct the disposal of such property by will, but making wills is not a common practice. Indeed, Local Courts appear to show some distrust of wills, putting more reliance on the status of the witnesses to the will than on any other factor.

It is in the nature of law based upon custom developed over time to react slowly to new situations. The growth in personal property is likely to become more rapid, and as in other countries with a similar relationship between family and personal property, considerable conflict can develop in the absence of clear and accepted rules about what falls into each category and what rules of succession should apply to each.

Islamic Law

The Mohammedan Marriage Act was passed in the colony of Sierra Leone in 1905. This gave statutory recognition to the religious rules governing the marriage, divorce and intestate succession of Muslims living in that area. These would fall into the non-native category. In the independent country of Sierra Leone all statutes apply throughout the whole country unless any specific area is excepted.

The Act provides that marriages made according to Islamic law may be registered. Such registration would provide prima facie evidence that the rules of Islamic law would apply to the consequences of marriage and divorce. Where a marriage is not registered, proof that it falls within the terms of the Act can be given in any court before which there is a matter in which application of Islamic law is claimed.

A problem of conflict of laws may arise when natives, resident outside the Western Area and adherents of the Muslim religion, die intestate. The Administration of Estates Act makes the distinction between descent

by customary law applicable to the estates of natives, and descent by general law applicable to the estates of non-natives. No mention is made specifically of descent according to Islamic law permitted by the Mohammedan Marriage Act. If the deceased had been married, and the marriage was registered according to the provisions of the Mohammedan Marriage Act, there would be no doubt that the rules of Islamic law relating to the distribution of property upon intestacy would apply. Similarly, where a marriage was not registered, but evidence can be adduced to show that it falls within the terms of the Act, these rules should apply.

The Administration of Estates Act does, in the Amendment of 1975, provide for the possibility that two descent regimes may apply to the property of a native who died intestate. If a balance remains after distribution according to customary law has been made, and there are persons who would have a claim had the deceased been a non-native, the balance would go to them. Presumably the right of claimants so to benefit could be determined either by Islamic or general law.

General Law

What is known as general law in Sierra Leone comprises English law and the rules of equity for which the reception date is January 1, 1880, and all statutes passed and still in force in that country. This law is applicable to non-natives, except, as already noted, to Muslims in the area of family law to whom the Mohammedan Marriage Act applies. It is applicable also to natives in those matters not covered by customary law.

The family law provisions of general law, therefore, apply to all non-natives other than Muslims. Sections of it may also apply to natives. A native may marry under the Christian Marriage Act or under the Civil Marriage Act, but the consequences of such marriages differ under general law. Marriage under the former Act means that the marriage is monogamous and the laws relating to bigamy, the legitimacy of children, the duty to maintain and the provisions of the Matrimonial Causes Act apply. But customary law would govern the distribution of property if the native were to die intestate. Under the Civil Marriage Act, the consequences of marriage would be somewhat different. A previous or subsequent marriage by customary law would not be bigamous, though a subsequent statutory civil marriage would be. As between the parties married under the Act, the provisions of the Married Woman's Maintenance Act and the Matrimonial Causes Act would apply, but as in the previous case the rules of intestate succession would be customary. As noted earlier, natives may turn to general law for assistance where there is no satisfactory remedy in customary law, as for instance where there is neglect or failure to maintain.

Reference has been made earlier to the importance attached to a marriage by the women of Sierra Leone. Harrell-Bond in her study, "Modern Marriage in Sierra Leone", notes that among western-educated Creoles Christian monogamous marriage is a symbol of high status. Civil marriages, though regarded as having more prestige than customary marriages because they are contracted under statute, are much less popular. It may be that the ambiguity that lies at the heart of such marriages makes them less desirable. Only about five per cent of those married according to the provisions of statutory law, contract civil marriages.

The age at which one may marry under the Civil and Christian Marriage Acts without parental consent is twenty-one years. Socially, however, the consent or at least the agreement of parents to the marriage is still considered of sufficient importance to be sought. The differences that obtaining such agreement may make may be seen if the husband is a native and dies before his wife. Consent to the marriage will strengthen her claim to be maintained by her husband's family especially if customary law rules govern the distribution of his estate. Under these rules wives do not inherit from their husbands. Usually, marriage under either of these two statutes can be taken to indicate the acceptance of a western lifestyle as between the partners and their children.

The subject of the ownership of matrimonial property and how it should be divided where there is conflict or where the marriage comes to an end has not attracted the attention given to it in most western countries. Perhaps this is due to the observed reluctance to end marriages even when the parties have ceased to cohabit. Property acquired during marriage is regarded as belonging to the husband. A wife may only with confidence claim anything she has purchased or acquired from her own resources. The legal situation regarding matrimonial property probably has much to do with the development of the practice reported by Harrell-Bond of husband and wives keeping separate financial accounts, the husband, however, being responsible for maintaining his home and family.

A married woman whose husband neglects or refuses to maintain her and their children may bring suit against him under the Married Woman's Maintenance Act. The awards that can be made under the financial limits imposed by the Act are so small that it is hardly worth the trouble to make an application under it unless other aid is dependent upon one being made. It is ironic that maintenance awards for children under the Bastardy Act are much better. This may reflect the fact that this Act offers a remedy to a much larger number of persons than the relatively small number married under the statutes. Included in the larger number are women married under customary law who are trying to get maintenance for their children from their husbands. An attempt in 1966 to improve their situation and remove the stigma of bastardy from legitimate children by providing for the maintenance of all dependents regardless of status in one Act proved unsuccessful. It is not surprising that women married under the statutes should feel threatened in a society where the male practice of liaisons outside marriage is widespread and where the legal provisions for their maintenance is so meagre.

The grounds for matrimonial relief are those which received the earliest recognition in English law - adultery, cruelty and desertion. Though judicial separation is available very little use is made of it, a marriage in name being thought to be better than no marriage at all. Consequently there is no pressure to make divorce easier. The preferred method of dealing with irreconcilable marital problems seems to be separation, though not on a formal basis. When there are marital difficulties, reconciliation is usually sought by family members. Indeed, the attempt to reconcile married couples goes beyond them, and may be attempted by lawyers or judges before whom maintenance matters, for example, come.

Socially, as well as economically, divorce results in more hardship for women than for men as a general rule. Not only do the rules governing the ownership of matrimonial property leave her only with what she can show to be hers, but she may well also lose her social status. A dispute over the custody of children of the marriage may well go against her. It is true that the courts administering general law make the welfare of the child the paramount consideration in any award of custody, but the assumption that children belong to the father is so widespread that she may not feel it worthwhile to press her claims. If, as is possible, her financial resources are much smaller than the father's, her claim will be the more difficult to sustain.

Marriage under either the Christian or the Civil Marriage Acts does not necessarily mean that the general law provisions relating to succession will apply to the property of the spouses. Whether they do or not depends upon the status of the deceased as a native or non-native. In matters of succession, the personal law of the deceased applies. The personal law of a wife is not changed by marriage under the Acts as it would if she were married according to customary law.

The general law relating to succession applies to all non-natives except Muslims. Property both real and personal in the English law sense may be bequeathed by will. The Administration of Estates Act lays down the rules for distribution upon an intestacy, which include, as customary law does not, the entitlement of a widow to a share of the estate of her deceased husband. As has been noted above, the general law may also apply to a portion of the property of a deceased native. The location of

of the property may be a reason. The jurisdiction of Local Courts in these matters is geographically limited and the disposition of the property of a native in the Western Area would lie within the jurisdiction of the Supreme Court, which has the power to recognise claims other than those arising under customary law.

The Administration of Family Law

Two systems of lower courts exist side by side in Sierra Leone. Courts based on the English system served the colony of Sierra Leone. The native courts continued to deal with civil matters according to customary law and some criminal offences during the life of the Protectorate. With some changes of name, administrative pattern and personnel in the native courts, both systems continue to the present day. While some of the English-type courts have been established in the Provinces, a similar spread of customary courts has not taken place in the Western Area in spite of the movement of population throughout the country. Though a Decree establishing a Special Magistrate's Court designed to administer customary law in the Western Area was passed in 1967, it seems never to have functioned. This lack poses a problem for those living in the Western Area whose affairs are governed by customary law.

In brief, the dual system of courts operates in the following way. The Magistrates' Courts administer general law, the Local Courts administer customary law and may in addition apply the rules of general law in matters coming before them to which there is no customary law applicable. These latter courts exist at three levels - Local Courts, Group Local Appeal Courts, which are joint courts for two or more chiefdoms, and District Local Appeals Courts over which instead of chiefs or their representatives, the Police Magistrate of the District presides assisted by two assessors to give advice on the rules of customary law. A matter initiated in a Local Court can go through all three stages, or appeal may be made direct to the District Appeal Court by-passing the Group Appeal Court. Included in the original jurisdiction of the Supreme Court are general law matrimonial causes as well as matters arising out of customary law marriages, seduction and breach of promise of marriage. There is a Local Appeals Division of the Supreme Court as well as an appellate division for the general law courts.

As remarked earlier, the present system of courts which has taken the place of the native courts lacks the conciliation aspect which was a feature of the work of the older courts. Though there is no requirement to do so, conciliation seems frequently to be attempted in family cases coming before the general law courts.

Some General Problems

There has been much comment about the problems caused by the perceived difference in status between customary marriages and those contracted under one of the statutes. In a country where different patterns of marriage and family organisation can be expected to persist into the future, the problem is not the achieving of one family law applicable to all, but how to give comparable legal recognition to the status of persons irrespective of the kind of family organisation in which they are involved. The dimensions of the problem can perhaps most clearly be seen by focussing on the married women in Sierra Leone.

The woman polygamously married clearly stands in a different relationship to her husband than the woman married monogamously. But her marriage is no less valid. It has long been recognised that the proof of the validity of a marriage is greatly aided by its registration. Marriages under the Civil and Christian Marriage Acts are routinely registered. There is provision under the Mohammedan Marriage Act for registration of marriages. Efforts to get registration procedures for customary marriages established in the various chiefdoms of the country have met with only limited success. But without such registration it would be difficult to extend to them the remedies existing under statute for women, the proof of whose marriage under other statutes being recognised as the basis for their claim to relief. Present trends indicate that remedies under general law will be increasingly sought as circumstances

arise in which customary law does not provide relief. Economic, educational and social changes will inevitably create a demand for new remedies outside the customary rules and to which they may have difficulty responding.

The need to clarify the ways in which persons can claim the status of native, or non-native, has already been referred to. Equally, there is need to define the application of the Mohammedan Marriage Act to native Muslims. Here again the compulsory registration of marriage may prove useful.

A particular problem of natives living in the Western Area is lack of access to established lower courts in which matters arising under customary law can be heard. The unofficial ones which exist no doubt serve a useful purpose in providing a forum for conciliation, but cannot satisfactorily replace courts whose decisions are enforceable. There is on the statute books provision for such a court.

Sierra Leone shares the interest in family law reform that has developed such momentum in common law countries during the last decade. But the problems which engage the attention in Sierra Leone, as in some other similarly situated African and Eastern countries, are not the same as those with a single system of law. Zabel summarizes their problem in the following words: "...basic to the encounter between two widely disparate cultures is the need to chart a balanced path of progress to produce a stable society with new values and fresh law." For this each country has to devise its own solution based upon the need of its own people.

Notes to the chapter on Sierra Leone

The demographic material and information on social indicators has been taken from: The UN Statistical Yearbook 1978
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