

CONCLUSION

From even this small sample of Commonwealth countries there is plenty of evidence that no one system of family law could be devised that would be appropriate to all its members. Though there are problems that they all share, and some, like the enforcement of maintenance payments, in which there has been much useful collaboration, each country has, in the field of family law, its own priorities and its own social goals. There is a shared concern about law reform in this area, but the problems addressed differ, as do the underlying reasons for seeking reform. England, for example, shares with places like Canada and Australia one overriding preoccupation. Graveson, writing in "A Century of Family Law"* articulated it in this way: "The inherent problem of our (English) lawyers is to reconcile the independence of the individual with the stability of the family as a social unit..." There are a number of other countries in which this would not be regarded as of the first importance.

The U.K. of course differs from almost every other Commonwealth country in that it does not have a written constitution. It could therefore be assumed that this would make law reform easier. Written constitutions impose a rigidity on the legislative and judicial systems of the independent countries of the Commonwealth which affects both family law and practice. As the chapter on Ontario demonstrated, it can be a considerable handicap to reform. But, if anything such handicaps seem to stimulate experiment. Both Canada and Australia have been far more willing than England to follow new directions in both law and practice.

The literature on law reform has grown immensely during the last dozen years. The reports of the Law Reform Commissions of England and the older Commonwealth countries have been eagerly studied by other countries wanting to change their own laws. This has been particularly true in the area of family law. It is not always clear however that many of the reforms advocated in these reports depend for their efficacy on a range of available social supports. Legal aid, financial benefits and a number of social services enable individuals to claim their legal rights, a fact that the study of legislation by itself does not make clear. However, as well as enabling, the social services can generate their own influence on family law and practice. This can be observed in England, where, as for example in the matter of taking and keeping children in care, it has begun to generate some controversy.

Whatever their system of family law, most Commonwealth countries seem to agree that adversarial conduct of family law cases does more harm than good, and that agreement amicably reached is far more likely to mean that obligations are honoured. This is particularly important where dependent children are involved. In recognition of this, the management of family breakup by the courts is becoming child-centred. But it has become obvious that this, by itself, will not guarantee that maintenance obligations, for example, will be met. There have been experiments with the use of conciliation in a number of countries with very promising results. But these experiments also indicate that if conciliation is to be an effective way of dealing with the range of financial, property and personal disputes that could arise, it has to be offered by skilled and trained persons, and the service would have to have a clear organisational link with the courts dealing with family problems. Understanding and acceptance of its role by lawyers as well as judges and court staff would seem to be essential.

With the gradual disappearance of matrimonial fault from divorce proceedings and where there is no general social acceptance that a child should belong to one parent rather than another, judicial decisions about the custody of and access to dependent children become very complex matters. The aid of probation officers, children's officers or other skilled persons has been sought in various places. This, taken with the experiments in conciliation seems to indicate a growing recognition that they can be an important element in the handling of cases where relationships will continue

* A Century of Family Law 1857-1957 ed. Graveson and Crave
Sweet & Maxwell p.414

after a decision has been given in the matter under dispute. This has indeed been accepted in places where family courts have been set up, but even where this has happened difficulties remain about the nature of the links between courts and services. In others, such difficulties foreseen, have inhibited moves towards the setting up of family courts.

In the developed countries, a world recession, unemployment and a resulting degree of economic hardship, have tested some of the assumptions on which matrimonial law reforms were based. For example, the notion of marriage as a partnership has come to mean that not only should the assets accumulated during marriage be equally divided on divorce, but that each party would, within a measurable span of time, become self-supporting. The difficulties that women face in returning to full-time employment in a less than buoyant job market after years looking after families, as well as the growing expectation that they must care for the old as well as the young, casts considerable doubt on the second part of the proposition. The answer to the question of how long a divorced wife should be able to claim maintenance is now much less clear than it seemed five years ago.

The countries in which more than one system of family law is recognised face problems that are altogether different. Not only must the legislative and judicial systems offer equal recognition to each separately, but must carry this over into situations where, by intermarriage or otherwise, they overlap. This is a problem to which each country will have, in the end, to find its own individual answer, as no country is exactly like another.

Migration of large numbers of persons within the Commonwealth has nearly always meant that some accommodation of their family law and practices has to be made by the countries to which they go. The experience of countries to which this problem is not new could be helpful. In the future development of family law, Commonwealth countries clearly have much to offer each other.