

The Family and the Future: Legal Perspectives

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The Family and the Future:

Legal Perspectives

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Introduction

For well over a century, humanity has been experiencing a rate of change unique in history. Even more significant, the rate of change is accelerating on itself. This has had and is continuing to have momentous results, particularly in the important social unit of the family. Roles have changed, marriage as an institution has changed, social and personal demands on marriages have changed. At the same time, society is demanding more and more of families. As a result, however, people are no longer sure of what they can expect and what they should do. Values and standards are constantly changing, economic and social circumstances are pressing, varying cultural, gender, ethnic and other diversities are more or less accepted. This means that what could previously be decided on traditional grounds, must now be decided on. We are all lost, faced with problems we never dreamed of, in an uncertain future. Peter Ustinov in *Dear Me* expressed an aspect of this, when he said, that as parents, we try to avoid the problems our parents made, and we end up with problems they never experienced.

The significance of this is that we need to go beyond the particularity and detail of what is happening to us. In *Trial by Sasswood*, by Esther Warner, she tells of a journey she made with her African servants to their home village, to

resolve

two disputes. The disputes partly resolved themselves on the way. As they journeyed, out in the middle of nowhere, they saw an African sitting by the track. He was on his own, just thinking. She asked what he was doing. He replied: "I have been on a long journey. I am waiting for my soul to catch up with me." Our society is experiencing many journeys, some social, some psychological, economic, environmental, international, national, local, and personal. Our journeys have disoriented and both liberated and imprisoned us. We need to discover their spiritual perspective. We have a deep need to let our souls catch up with us, and to hear what they have to say.

Letting Our Souls Catch Up

As the spiritual perspective is fundamental to all the other aspects of life, it leads to more constructive judgment of what is happening. This requires us to deepen in our spiritual knowledge and to seek that inner stillness, in which the peace that passes all understanding is found.

What we learn in that stillness - the values of the spirit and the judgment, must be used to make sense of this kaleidoscopic world. This putting of wisdom into reality, creates order by basing action on the principles of the spirit and the values of peace. Consequently, we immeasurably enlarge the constructive forces within our world. To use modern jargon, we translate our responses from re-action which tends to be unthinking, to pro-action where a positive environment is created.

This is where we find the wisdom of Bahá'u'lláh's command, that we should not just deal with sciences which begin with words and end with words. Bodies of knowledge should not just be exploited for ego trips, but to illumine the world of being. At the present, the mass of information and conflicting interpretations, adds to the general confusion and disillusionment.

The Function of Law

From even before Shakespeare ("Kill all the lawyers"), to the present day, lawyers have often had a bad press and poor public relations. The

technicalities, delays and injustices of law have antagonised many people in the community in a time of deep and vast changes placing heavy pressures on the ability of legal institutions to cope.

The real function of law is basic and vital to societies. It is to create a positive environment of order and stability which allows either constructive or destructive development, depending on one's values.

Moses' Revelation, bringing law and order to society, provided the basis for the development of further civilisations. Law is really not dry as dust technicalities but a living development of justice and equity. This releases energies, time and resources to be directed to a wider variety of purposes than just surviving.

Law does this in two ways:

- i. by setting standards: by rules, legislation, custom, usages, so that society has guidelines for its behaviour. These guidelines are very important and can have profound effects. So the fact that married women were not legally regarded as "persons" for many centuries in English law, meant that their interests were often disregarded. They had no input either into policy or into the legal institutions. This only started to change in the 19th century. A bitter and long fight occurred in which both men and women finally obtained for married women, a degree of equality.
- ii. by resolving disputes: We all know the penalties of unresolved disputes, - to name a few, Bosnia, Rwanda, the Mafia had their origins in a legal system which denied them justice and so on.

Traditionally, for a problem to have a legal remedy, it had to be one that society thought was important enough to provide a remedy through the Courts. Some important issues are not regarded as important enough. For instance, domestic violence was tolerated and regarded as scripturally acceptable. It is only very recently that both children and women have been receiving better recognition by the law and its institutions. Sexual abuse and cruelty was often hushed up because of the damage to the offender and the family. The legacy from this has been the incalculable damage done to trust,

freedom from
fear, and respect in the social relations between men and women.

Also with their adversarial approach to litigation, our Courts
traditionally divide rather than heal. This is of critical importance
particularly in
family situations, where parenthood does not end with dissolution of the
marriage.

Unresolved emotional conflicts can destroy lives. The law is slowly turning to
a way of
resolving differences by co-operative rather than adversarial means. This is
what is
called the Alternative Dispute Resolution movement. It is still in its infancy
and
requires a great deal of thinking through and adjustment. It lies behind the
Family Court
initiative and a more sensible and sensitive approach by Family lawyers and
others to
family problems.

It has made us more aware of how our traditional law has shaped our
attitudes and standards:

the way we resolve family disputes

the way we analyse the

the processes we see as appropriate to resolve them.

i. the way we resolve family disputes

The effect of English law, (on which Australian and New Zealand law is
based), has accustomed us to think of the family as a collection of
individuals, rather
than as a group with social, emotional and personal cohesion and significance.

The part of
the law which laid emphasis on the family as a group, tended to be the part
which was
concerned with making family members financially responsible for each other.

The result often is that the legal process of resolving disputes within
the family, can have worse repercussions on family relationships, than the
dispute itself.

We are trying to remedy this with less adversarial approaches, but are nowhere
near a
solution which combines justice with effectiveness.

A further consequence has been that since family law moved from the
church to the civil courts in the 19th century, its approach has been secular,
segmented, and
dominated not by considerations of the family, but by the areas of law relating

to the legal remedies. So rather than being a comprehensive and cohesive body of law, founded on principles about the family, it is a collection of laws reflecting aspects of the family relationship and the principles of the laws which give remedies. These are not all founded on a harmonious values base.

In seeking a more balanced, more harmonised body of law, it is important to look at the contributions indigenous people can make in enlarging our wisdom.

One of the treasures of indigenous people and many ethnic minorities, has been that in the past they have been moulded by values that were based both on the importance of the family and the wider family. This is not to say, that all of their law will translate into modern conditions. It is more the thinking and the principles behind it, which can illuminate and develop our own approaches. It becomes more a matter of respecting and understanding the fundamental bases.

Perhaps what we should be looking for in our dialogue, is for a balance in which individual creativeness, initiative and fulfilment can be fostered and social objectives, such as the harmony of society and the security and development of families can be attained. We need a dynamic balance, developing and adjusting as society develops.

To achieve this, we should use all the wisdom of the challenging and diverse society in which we live.

ii. the way we analyse disputes

Where families are seen as a collection of individuals, then one person's right often conflicts with some one else's. Rights have been an important step in the struggle towards equality. They have given the limits over which members of the family should not step. They do not however provide a good basis for resolving all disputes. By their nature, individual rights conflict with each other.

The Bahá'í approach is a step further on this and allows a more co operative approach. It is based on the view that all members of a family have

obligations to each other and this network of obligations is an important function of the family. It creates a basis of respect and concern which is most important to the quality of family life. It is an aspect which needs re enforcing in today's individualistic society.

Families are much more than the sum of individuals. They provide a basis of love, security, guidance and resources which is invaluable to the quality of life. Local communities at their best, are like an extended family. When society begins to focus on the group as well as the individual potential of the family, much constructive energy will be released.

iii. processes we use to resolve family disputes

As can be seen, the traditional processes in the legal system, have been adversarial, interventionist and disempowering. The significant move to alternative systems which are more co operative and empowering, has still its own problems. Personal agreement or resolution of disputes needs an established boundary of fairness or justice.

Our very diverse society is probably not able to crystallise such limits at this point.

However it is important for communities and individuals, to really start to deepen on what family and social values are and what their balance is as respects individual rights. This is a question of great importance for the future of families and one on which diverse attitudes should be sought and used as a basis for deeper understanding.

A more co operative approach depends on mutual respect and an equality which must be created socially and individually, and not just taken for granted.

Conclusion

We are seeing a world in the making. A most important and influential part of that world is the family. What happens there stamps a person for life. We need to become informed, thoughtful, and above all else, wise, in order to promote constructive development of the family in our society.

Legal action and institutions must be developed which are positive,

constructive and
linked with community education and resources to improve the quality of family
life. Most
importantly, we must not forget that all life has a spiritual perspective and
when
spiritual and material worlds meet, then life has its greatest potential.

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