

Law? What is it good for?

In a system where there appears to be fewer effective checks and balances, where legislation no longer seems to guarantee protection or promote peace, we may well ask: what is the point of law? It is a long forgotten question and one which arguably should be at the forefront not only of every government's consciousness but also, every modern legal drafter's mind.

In the Family Justice System, the pragmatic reasons behind a law are just as important as in any other legal field, but too often the laws being used are out of touch or don't touch sufficiently upon the issues at hand (or just aren't touchy-feely enough; okay, enough with the touching, I think I've touched on everything). We have used law for centuries, to stabilise our environments and to restore peace; if conflict is the biggest obstacle to achieving a peaceful resolution for families, to what extent should the law play a part in removing that obstacle?

If we take the view that the law is inherently a moral tool, designed by society we could also deduce that it is a way of making sure that society's perceptions of right and wrong are safeguarded. This in turn then places an onus on legislation to enforce those cultural norms for the greater good and as every country's perception of right and wrong differs to varying degrees, there is no denying that for law to remain relevant, British politicians need to start listening to its public's opinion.

Whilst the sensationalist approach of the media may have contributed to an overly sceptical view of the Family Justice System, the criticisms today of these courts are grounded in a deep dissatisfaction expressed not just by a third party public, but by the very families who go through the system. These growing pains are signs that our laws have gotten left behind in a fast moving and ever changing world and the sheer volume of complaints about the system cannot be put down to media hyperbole alone.

Like a philosophical thief, conflict is robbing the Family Courts of its ability to practice law pragmatically. Whether in the words of a disgruntled ex-wife's instructions to her lawyer or the solicitor's slinky manoeuvres to gain an advantage for their client, the role of the law is to protect people from harm and to protect people from themselves.

Family lawyers often complain about clients being aggressive and wanting to have their day in court but that day in court would not exist if it were not an option: an option cultivated by a system with a heavy bent towards dispassionate sparring. Furthermore knowing that a hearing in the Family Courts, which is still a judgement based experience, implying the innate need to pick a side rather than collaborate, will enable ritual humiliation and in its present state the glaring opportunity to fib your pants off should you be that way inclined, picking a day in court is a choice readily made by a wounded heart and not a peaceful mind. Is legislation then not obligated to take the moral high ground and ensure that such game play can never be a part of an equation that ultimately works best with minimal levels of conflict?

The shift away from the court room and towards Collaborative Law, where the underlying principle is to underscore friendly negotiations with an understanding that the parties will not litigate, indicates that families need an alternative way to resolve their disputes. It is fascinating to note that the demand for change has come from the families themselves and

that law is now having to adapt to a new scenario; proof that law is only valuable when it addresses a tangible public concern, whether from a moral, economic or political standpoint.

Of course conflict in the system does not just manifest itself amongst angst ridden spouses or parents or even the systematic process of the family court itself; conflict also occurs in interest. As discord mushrooms out of control in the Family Courts, conflicts of interest play a starring role in frittering away the possibility for peaceful interchange. The opponent style methodology, where the spouses are effectively sent off into opposite corners of the boxing ring sets a pretty poor example and makes it much easier to take the gloves off at some point with some lawyers forgetting their pledge to serve the court before their kudos and all too readily indulge in unethical practice to gain the upper hand, whether it be filing forms accidentally on purpose at the last minute or pushing their clients into unnecessary court costs.

Yet perhaps the most worrying conflict of interest stems from judicial discretion; a fabulously flexible tool for steering vulnerable families through their dilemmas, it is susceptible to abuse once discretion becomes a synonym for law-making. The notion that a judge cannot only apply law but can make law by virtue of setting precedent is not in and of itself a bad thing: unless of course a conflict of interest presents itself. There have been several cases where conflicts of interest have swayed a judge one way or another and the most recent spate of attacks on Labour Lords shows only too clearly what happens when personal interest colludes with incentive and emotion.

The paradox perhaps lies in the awesome potential of the judiciary and judges in general to respond fast to problems on the ground; they have the capacity to be the ultimate bastions of law – acute, well informed and sophisticated. They could effectively be the missing link between law and real time changes. To achieve that, judges would need to revise their purpose, just as law needs to revise its own in a timely and consistent manner.

Our legal system will not survive unless it seeks to make laws that are just, which it can only do if it strives for compassion and compromise. Judges could offer the ultimate solution in reducing conflict and promoting peace by simultaneously offering up the court room as a safe haven for the exchange of ideas rather than the battle ground for a war of words and making fast and effective changes to the law that keep it contemporary and moral. In an era where cyberspace offers up the perfect allegory for a world of information within our world, there is no excuse: our politicians and our judges are perfectly poised to take on board every forum online and every e-petition signed to make English Family Law a force for the greater good.

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