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THE FAMILY COURT: A SOCIOLOGIST'S PERSPECTIVE ON ENLIGHTENED COLLABORATION BETWEEN LAW AND SOCIAL SCIENCES*

This discussion addresses the efforts to design and implement a family court in Singapore. Three main aspects are covered in separate sections. The first aspect concerns the definition and brief history of the family court. The second section examines succinctly the three main factors fostering the collaboration across fields of knowledge in the planning and setting up of family courts. I conclude in the third section with some comments on the potential of this collaboration for the solution or containment of family problems locally, based on Singapore's historical and current situation.

IN societies moving towards post-industrial development, scientific collaboration among diverse areas of knowledge is the norm. Scientific collaboration may take many forms, ranging from the cross-national transfer of technical expertise among professionals in the same field of knowledge with the objective of solving a pragmatic problem (for example, irrigation of lands affected by severe drought) to complex multi-disciplinary collaboration on a conceptual aspect at the frontier of science.

Still, scientific collaboration tends to be easier among disciplines that fall within the boundaries of one field of knowledge, for example, physical sciences, or social sciences, or law. The dearth of 'cross-field' studies during the past ninety years suggests that there is some hesitation or inability among experts to traverse these perceived boundaries. As far as law and the social sciences are concerned, it is not uncommon to find in the legal literature references to findings and concepts from the social sciences. Psychologists, social workers and other social scientists are also called from time to time as expert witnesses in judicial procedures. But these instances do not amount to active collaboration between legal professionals and social scientists. It is for this reason that the case of the family court deserves special attention. I will discuss the family court as the outcome of an unusual and promising

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collaboration among experts in law and the social sciences. The family court involves legal professionals and social scientists working together both in the realm of conceptual analyses of social behaviour, justice, law and order, as well as in the designing and running of a practical institution set up to serve individual citizens and families in need. Thus, the family court is a good example of expert collaboration across knowledge fields that is both conceptual and practical.

Accordingly, my discussion will cover three aspects. I will deal first with the definition and brief history of the family court. In the second section of this paper I will cover succinctly the three main factors fostering the collaboration across fields of knowledge between social scientists and legal professionals in the planning and setting up of family courts. I will conclude in the third section with some comments on the potential of this collaboration for the solution or containment of family problems, suggesting some negative and positive aspects of implementing the family court in Singapore.

I. What Is the Family Court?

There have been several definitions of "family court" presented over the years by legal experts in various countries. But, despite the variation in wording, the essential accepted meaning of the family court as a judicial institution in the current legal literature is still the 'classical' definition first used in 1925 in Toledo, Ohio, when the Family Court of Toledo was set up. Following the Toledo definition, a family court is:

> an integrated and unified jurisdiction in a single court with competence over all aspects of family stress ... [for example] juvenile delinquency ... divorce, nullity and separation ... guardianship and custody disputes; maintenance; matrimonial property disputes; domestic assaults; child neglect and cruelty; adoption; affiliation. Instead of jurisdiction over such matters being fragmented between several courts, it is consolidated in a single court, although there may need to be specialised divisions or sections within that one court.[1]

It is apparent then that the idea of the family court as a unified judicial institution has been around for most of this century, and that the concept of a family court originated in the United States. In his analysis of the legal background of the family court, Brown[2] traced the origins of the idea of a family court to the second part of the nineteenth century when the

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[1] See Hoggett and Pearl, *The Family Law and Society* (1983), at 627. This is their quotation of Neville L Brown's ideas in his 1966 article "The Legal Background to the Family Court" Brit J Criminology 139.

[2] Brown, *supra,* note 1.

authorities in the United States and England became preoccupied with the handling of juvenile delinquency. Brown, a British lawyer, conceded that "the Americans had a short lead" over the British in establishing juvenile courts: the first juvenile court was set up in Chicago in 1899, and the British followed the movement with the passing of the Children Act in 1908.[3]

The ineffectiveness of the juvenile court in handling a variety of family problems of juvenile delinquents awakened in the minds of concerned officials and professionals the urgent need to improve the courts' institutional system and structure. Thus, the juvenile court served as a predecessor of the family court in both the United States and Britain. But interest in the concept of family courts grew faster in the United States, where a second historical event – after the Toledo Family Court was set up in 1925 – was, according to Brown, the in-depth study conducted by the New York Bar in 1954 on "Children and Families in the Courts of New York City". This study was crucial in the formulation of the American family court legislation in 1961. In contrast, the idea of family courts made an impact in Britain only in the 1960s.[4] Today, the family court concept is being discussed or tried out in various countries, particularly the United States, Canada, the United Kingdom and Australia. It is common also to find intermediary arrangements made before a country decides to implement family courts. In England, for example, the Family Division of the High Court has been the historical bridge between the nineteenth century's juvenile court and the family court of today.[5]

II. The Path Towards Collaboration

It may be accurate to say that in the case of the family court, collaboration between legal professionals and social scientists is born out of necessity. Just as it occurred in the United States and Britain, concerned professionals in other nations are becoming increasingly critical of the problems created by the fragmentation of work among several courts dealing with family matters and the negative consequences of such problems for the individuals and families involved. Besides the contradictions and frequent instances of 'overlapping jurisdiction' created by the plethora of courts involved in a given case, the most frequently mentioned problem are the high costs to citizens in terms of legal fees payable to several courts, time spent going from one court to another in different locations and the inconvenience of dealing with different officials and legal personnel that have only a partial – and thus distorted or incomplete – view of the person's legal problem

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3 See Brown, *ibid,* and Hoggett and Pearl, *supra,* note 1, at 627.

4 Hoggett and Pearl, *supra,* note 1.

5 See Hoggett and Pearl, *supra,* note 1, at 631; and Bromley, *Family Law* (1981), at 663-664.

and cannot appreciate the long-term consequences of their fractional solutions for his or her personal and family life. As summarised by the Law Reform Commission of Canada, the fragmentation of legal work on family conflicts causes "despair, confusion and frustration" and "[a]s far as the general public is concerned there appears to be no reason why all legal matters arising from a matrimonial or family dispute should not be dealt with by a single court."[6]

These are clearly social problems. Yet, the voices raised in support of a judicial reform that would establish family courts come overwhelmingly from the legal profession rather than from social scientists (with the exception of some professional social workers with vast job experience with the judiciary system). The explanation may be that social scientists' concern tends to be more on social policy rather than on judicial reform. This difference in focus is, of course, derived from the difference in areas of expertise. In contrast to lawyers, social scientists are more inclined to approach family stress and conflict from a micro-perspective by looking into the social-psychological nature of internal relations among family members.[7] Or they may use a macro-perspective by analyzing the country's social policies in the context of the social, political and economic frameworks under which such policies are formulated and implemented.[8] Some social scientists apply a combination of micro- and macro-perspectives.[9]

While the need for a unified family court system has been perceived and promoted mostly by members of the legal profession, there are three main reasons that have fostered their collaboration with social scientists in this regard. The first reason is the legal professionals' increased recognition of the contributions made by the social sciences in the study of the family as a social unit. Legal professionals involved in family law have expressed this recognition explicitly and implicitly by incorporating social science findings and concepts in their work.[10] Indeed, social science research over the past five decades has demonstrated the internal dynamics of the family

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6 See Law Reform Commission of Canada, *The Family Court* (1974), at 7-8; and Hoggett and Pearl, *supra,* note 1, at 626.

7 Some examples of this type of approach may be found in: *Social Stress and the Family - Advances and Developments in Family Stress Theory and Research* (Mc Cubbin, Sussman & Patterson eds, 1983); and Olson, McCubbin, Barnes, Larsen, Muxen and Wilson, *Families - What Makes Them Work* (1989).

8 See, *eg, The American Family and the State* (Paden and Glahe eds, 1986); Glazer, *The Limits of Social Policy* (1988); Zimmerman, *Understanding Family Policy. Theoretical Approaches* (1988); and Cherlin, *The Changing American Family and Public Policy* (1988).

9 See Kamerman and Kahn, *Mothers Alone - Strategies for a Time of Change* (1988); Quah, *The Family as an Asset - International Perspectives on Marriage, Parenthood and Social Policy* (1990).

10 See, *eg.* Brown, *supra,* note 1; Parkinson, "Bristol Courts, Family Conciliation Service" (1982) 12 Family Law 13; and Hoggett and Pearl, *supra,* note 1.

as a social group including, among other aspects, evidence on the inter-dependence of family members and the negative consequences of personal crises for the individual's family life. These findings are highly relevant to the judicial approach to divorce, child custody and other matters in family law.[11]

The second main reason motivating legal professionals to seek collaboration with social scientists is the dual role of the family court promoted by its supporters. This dual role of "adjudication and welfare" was put in the simplest terms by the Committee on One-Parent Families in England, otherwise known as the Finer Report. In their 1974 Report, the Committee recognised the uniqueness of the family court concept by asserting that the family court as a "judicial institution" seeks *"to do good as well as to do right"* even though "to promote welfare is an unusual function for a court of law."[12] In 1966, Neville Brown pointed to the same dual purpose of family courts when summarising the lessons learned from juvenile courts:

> the juvenile court demonstrated how legal institutions, with the help of the social sciences, could successfully resolve social problems in an intelligent and constructive way; that is, that courts and the law may serve people in trouble, as well as to vindicate rights, redress wrongs and mete out punishment ...
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> In every case it [the family court] would seek to diagnose and cure the underlying cause of the family disorder. Thus, in divorce it would think first of marriage-mending before marriage-ending. For this remedial function it would need to be buttressed with adequate expert assistance... Where, however, cure proved impossible, the family court would perform its legal operation ... with the least traumatic effect on the personalities involved.[13]

Although legal professionals who advocate the family court tend to agree on its dual role of adjudication and welfare, there is no consensus on how far the family court should go in "doing good". The Finer Report emphasized that, of the two roles, the fundamental obligation of the family court is adjudication. It stressed that the goal of "achieving welfare must not be permitted to weaken or short cut the normal safeguards of the judicial process", and it warned that the persons approaching the family court should not be seen as "clients" or "patients" seeking "treatment". Instead, "the

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[11] Parkinson, *supra,* note 10.

[12] See Finer, *Report on the Committee on One-Parent Families* (1974); and Hoggett and Pearl, *supra,* note 1, at 630.

[13] This is a quotation of Neville Brown, *supra,* note 1, by Hoggett and Pearl, at 627 and 629.

individual in the family court must... remain the subject of rights, not the object of assistance."[14]

This brings us to the third main reason why the legal profession seeks cooperation with social scientists. This third reason derives from the question: should the family court procedures be inquisitorial or adversary? The search for an answer to this question has moved legal professionals to further their dialogue with social scientists although the former have not, as yet, fully agreed on what is the right answer. In adversary or accusatorial proceedings, the parties decide on the issues of the dispute and on what evidence to present in court. In inquisitorial proceedings, the court may collect evidence directly.[15] Some legal experts state that a combination of both inquisitorial and adversary proceedings is the best solution. Others disagree.

The combined proceedings position is inspired by social science research findings on the family as a dynamic social unit, and presumes close collaboration with social scientists. This position is best represented in the 1974 paper on the "Family Court" by the Law Reform Commission of Canada.[16] The Commission stated that "the resolution of family conflicts require some modification of the traditional adversary process. To leave reconciliation and settlement of issues exclusively in the hands of the lawyers is inadequate."[17] In contrast, the British Committee on One-Parent Families was more conservative. The British Committee felt that the two types of procedure are not "mutually exclusive", and that both are applied in divorce and child custody cases:

> To the extent that the court requires assistance by way of investigation or expert assessment of circumstances which it considers material, this function should be discharged by ancillary services which are attached to or can be called upon by the court, but whose personnel are not themselves members of the court. The bench of the family court is to consist only of judges.[18]

The position represented in the Finer Report is that collaboration with social scientists is encouraged, and that the family court bench "should, in every aspect of its jurisdiction, be able to call upon the aid of a competent person to make social and welfare enquiries and reports." But, at the same time, the Committee insisted that priority must be given to the *due process of law* over the social scientists' input.

A similar reservation about collaboration with social scientists – in this

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[14] See Finer, *supra,* note 12; and Hoggett and Pearl, *supra,* note 1, at 630.
[15] Finer, *supra,* note 12; Hoggett and Pearl, *supra,* note 1, at 632.
[16] Law Reform Commission of Canada, *supra,* note 6.
[17] Law Reform Commission of Canada, *ibid;* and Hoggett and Pearl, *supra,* note 1, at 627.
[18] See Finer, *supra,* note 12; and Hoggett and Pearl, *supra,* note 1, at 632-633.

case with social workers or psychologists acting as marriage counsellors or conciliation officers – was reported in a study of the Bristol Courts Family Conciliation Service.[19] The study found that some divorce lawyers in private practice "were uneasy about the effect of a conciliation service on the solicitors/client relationship ... the clients might feel abandoned if referred to another agency." Yet, the legal profession's ambivalence on the collaboration with social scientists surfaced again. The author reported that there was "a general awareness" among solicitors "of the shortcomings of the adversarial system" in divorce proceedings. Solicitors interviewed felt that this problem and the absence "of legal aid from decree proceedings in undefended divorce" persuaded them "to find a separate conciliation service broadly acceptable."[20]

In sum, three main factors may be identified as motivating the legal profession to collaborate with social scientists in the designing and implementation of the family court: their recognition of the social sciences' contribution to the study of family behaviour; their awareness of the importance of combining the concepts of adjudication and welfare in the family court though there is no agreement on how that combination would be determined; and their acknowledgment of the limitations of adversarial proceedings in family law.

As revealed by a review of published material (research reports, court cases, legal papers and articles in professional journals and books), an expected outcome of the combination of these three factors is that collaboration between law and the social sciences usually takes two forms. On the one hand, lawyers tend to apply what they learn from social sciences about social and family behaviour. This is particularly frequent among legal practitioners involved in family law. On the other hand, lawyers in family courts have now more opportunities to work with social scientists – primarily social workers and psychologists – in the handling of specific cases that require the latter's expertise as consultants, counsellors or conciliation officers.

III. The Challenge of Implementation

As suggested in the preceding pages, although most family law practitioners tend to agree on the importance of the family court concept, there is not yet consensus within the legal profession on specific and crucial aspects of its implementation such as the extent to which welfare should be combined with adjudication; the manner in which inquisitorial proceedings should operate; and how close to the family court bench should social scientists

[19] See Davis, "Conciliation or Litigation?" LAG Bulletin, April (1982), at 11-13.
[20] See Davis, *supra,* note 19, at 12; and Hoggett and Pearl, *supra,* note 1, at 649.

function. Naturally, these unsolved questions weaken the implementation of the family court concept. However, findings from social science studies not only support the family court concept but also suggest guidelines for its implementation. A few examples will suffice.

Sociological research findings on family behaviour strongly suggest that efforts at family conflict resolution are more likely to succeed when the family is approached as a dynamic and adaptable unit of interdependent individuals.[21] It is thus important to strive towards coordination and continuity in the judicial and other institutional procedures set up to help families in conflict. The family court as defined by Brown[22] is a very promising institution in this respect.

As mentioned earlier, the goal "to do good as well as to do right" was proposed by the Finer Report[23] as one of the top objectives of the family court. Social science findings confirm that when informal support networks fail or cannot fully provide help to families facing conflict, formal support institutions play a crucial role in assisting those families.[24] The family court is the best example of a formal support institution that individuals and their families can rely upon to suggest or provide equitable solutions as well as assistance to overcome hardship. But an important requirement of this dual goal is that a mediating structure should form part of the concept of the family court, preferably as the institutional partner of the family court rather than as one of its internal components.

Similarly, the introduction of inquisitive proceedings and the lessening of adversarial proceedings is an approach supported by social science studies. Relevant research findings show that the probabilities of successful conflict resolution increase when blame is avoided or reduced and when negotiation and bargaining are, correspondingly, emphasized in conflict management.[25]

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[21] See Klein and Hill, "Determinants of Family Problem-Solving Effectiveness" in *Contemporary Theories About the Family* (Burr, Hill, Nye & Reiss eds, 1979) Vol I, at 493-548; Hansen, and Johnson, "Rethinking Family Stress Theory: Definitional Aspects," in Burr, Hill, Nye and Reiss, *supra,* at 582-603; McCubbin, Sussman and Patterson, *supra,* note 7; Olson, McCubbin, Barnes, Larsen, Muxen and Wilson, *supra,* note 7; and *Assessment of Marital Discord* (O'Leary ed, 1987).

[22] See Brown, *supra,* note 1.

[23] See Finer, *supra,* note 12.

[24] See *Social Networks and Social Support* (Gottlieb ed, 1981); Kamerman and Khan, *supra,* note 9; *Family Support systems Across the Life Span* (Steinmetz ed, 1988); and Quah, *supra,* note 9, at 10-13.

[25] See Sprey, "Conflict Theory and the Study of Marriage and the Family" in Burr, Hill, Nye & Reiss eds, *supra,* note 21, Vol II, at 130-159, Wallerstein and Kelly, *Surviving the Breakup: How Children and Parents Cope with Divorce* (1980); McCubbin, Sussman and Patterson, *supra,* note 7; Olson *et al, supra,* note 7; Wallerstein and Blakeslee, *Second Chances. Men, Women and Children a Decade After Divorce* (1990); and Blumel, "Explaining Marital Success and Failure" in *Family Research. A Sixty-Year Review, 1930-1990* (Bahr ed, 1991) Vol 2, at 1-114.

As Parkinson[26] rightly suggested, the "gladiatorial divorce advocate" should not be a part of the institutional setting offered by the family court to help families in conflict.

In contrast to the active discussion of the family court concept in many countries, its implementation has been laggard. The lack of consensus on the answers to the last two questions (how to do good while doing right, and how to de-emphasize the accusatorial approach), is a major obstacle slowing down the implementation of the family court in some countries. Besides these difficulties there is, of course, another problem predicted and confirmed by social science research: resistance to change is a very common feature of human groups. Resistance to change is manifested in various ways. Among the most common arguments to delay or avoid a change that is otherwise supported, are financial costs and lack of physical space. In the mid-1970s, the British government argued that the delay in the setting up of family courts was due to the need for new buildings to house the family courts across England and that there were no available funds for this purpose. These arguments were strongly refuted by two bodies representing legal professionals and supporting the implementation of the family court.[27] Other lawyers have reported that the family court occupies a very low position in the list of priorities of the legal system in many countries where the decision-makers attribute their delay to the fact that they are pressed by other more urgent matters such as a chronic backlog of unresolved court cases, an insufficient number of judges and other court personnel, or both.[28]

The Family Guidance Service

Of all the possible reasons for the delay in implementation of the family court, the problem of combining welfare and adjudication deserves special attention. As I mentioned earlier, the potential solution may be found in the concept of *mediation* presented in the form of a non-judicial institution or mediation service that I may call the Family Guidance Service.

The fundamental principle justifying the creation of the Family Guidance Service is that mediation efforts to save families from irretrievable marital breakdown should be offered to families as early as possible in the process of accumulating grievances that leads to the escalating deterioration of marital and family relations. Mediation services are futile if they are offered only at the divorce court when, in the eyes of the spouses, their marriage

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[26] See Parkinson, *supra,* note 10.

[27] See Society of Conservative Lawyers, *The Case for Family Courts* (1978); Law Society, *A Better Way Out: Suggestions for the Reform of the Law of Divorce* (1979); Law Society, A *Better Way Out Reviewed* (1982); Hoggett and Pearl, *supra,* note 1, at 634-635.

[28] See Murch, *Justice and Welfare in Divorce* (1980); Hoggett and Pearl, *supra,* note 1, at 635.

has reached, or is very close to the stage of irrevocable breakdown. In this respect, I agree with the position of the Law Commission[29] and the Finer Report[30] that it is too late trying to mend a marriage at the court stage. As Davis[31] emphasized, mediation should be "a first" and not "a last resort".

What is mediation? Basically, mediation is the community's effort to help the marriage partners to reconcile their differences in an equitable and mutually respectful manner. Mediation may take the form of marital and family counselling, and should be accessible to any family in the community irrespective of the family's ability to pay for the service. A more elaborate yet useful definition of mediation was offered by Wolcott following the Australian experience. In her view, mediation means "to empower the parties to make informed decisions and agreements between themselves rather than ones imposed by outside parties through legislation."[32]

However, Wolcott's definition of mediation covers two separate processes, reconciliation and conciliation. The definitions of these two processes offered by Finer[33] and Parkinson[34] are very relevant at this point. According to these authors, reconciliation is the mending of disagreements and the resolution of serious conflict between the partners. It involves counselling with the objective of reuniting the spouses. In contrast, conciliation is best interpreted as a legal process that involves couples who are convinced that their marriages have broken down irretrievably. Conciliation refers to helping the couples to deal with the consequences of their decision to end the marriage and to settle the details of the divorce or separation including children's custody and other matters. As is true of reconciliation, one of the objectives of conciliation is reaching an agreement as amicably and fairly for both parties as possible.

The proposed Family Guidance Service would provide counselling and would have reconciliation as its first objective. For this purpose the Family Guidance Service must be staffed with professional counsellors, clinical psychologists specialized in family therapy, and social workers. A second objective of the Family Guidance Service will be to liaise with and to assist the Family Court at two levels: (a) to implement the Court's final attempt at reconciliation of couples seeking divorce; and (b) to work jointly with the Family Court's legal officers and case lawyers in helping the divorcing couples in the conciliation process.

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[29] As presented in Law Commission, *Reform of the Grounds of Divorce – The Field of Choice* (1966).

[30] See Finer, *supra,* note 12.

[31] See Davis, *supra,* note 19, at 11-13.

[32] See Wolcott, "Mediating Divorce – An Alternative to Litigation" (1991) 28 Family Matters 47.

[33] See Finer, *supra,* note 12, at para 4288.

[34] See Parkinson, *supra,* note 10.

This suggested division of labour between the Family Guidance Service and the Family Court seeks to settle the misgivings of legal professionals concerning the combination of welfare and adjudication as goals of the same institution. I concur with the Finer Report that the objective of community involvement in helping families in conflict should be a dual objective, that is, "to do good as well as to do right."[35] But in my opinion, the Family Court is not equipped to attain both objectives alone because it does not have the necessary expertise and because, as I said earlier, its intervention in providing help reaches the spouses too late. Therefore my proposal is to set up the Family Guidance Service as the mediating institution that will be a *partner* of the Family Court, will offer reconciliation services *independently* of the Family Court, and will provide these services well before the marital problems lead one or both spouses to the decision to divorce.

At the same time, the expertise of the Family Guidance Service's professional staff will be utilized jointly with the legal expertise of the Family Court staff to help couples who, after counselling, have decided that they are beyond reconciliation. This will be the opportunity to combine adjudication and welfare. Moreover, the partnership between the Family Guidance Service and the Family Court, will permit the latter to benefit from the professional expertise of the former in the use of inquisitorial proceedings that will elicit objective information and thus help the Family Court judges to arrive at just and equitable decisions.

A final objective of the Family Guidance Service is the efficient utilization of professional expertise in order to increase the availability of family counselling to all members of the community. In most modern countries today, one finds an array of family experts from different disciplines, including psychology and social work. Most of these professionals may work in the private sector offering a variety of services both for a fee as well as free of charge through volunteer non-profit organizations. The Family Guidance Service should tap this pool of experts and services by taking the form of a *network* rather than becoming just another counselling service.

More specifically, the Family Guidance Service should have two levels: a main operating centre and a network of branches. The main operating centre or headquarters of the Family Guidance Service will offer basic family counselling services to the public and will function as the coordinating, research, and referral centre for family counselling. The branches will be constituted by a network of affiliated clinics and counselling services already available in the public and private sectors. In this manner, the existing public and private counselling clinics and services will be incorporated, if they request it, into the Family Guidance Service. The link between these affiliated clinics and the operating centre should be kept strictly professional. The

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[35] See Finer, *supra,* note 12.

Family Guidance Service should not become a monopoly of services that may affect the individual consumer.

I have discussed thus far the most important aspects of the family court concept and of its implementation from a global perspective. That is, I have identified common experiences in countries where the idea of a family court has been considered or attempted. I want to conclude this brief analysis by referring to the situation of the family court concept in Singapore as an additional example of the persistence of those international features.

IV. THE SINGAPORE CONTEXT

The basic trend discussed in this article, that is, the collaboration between law and social sciences, is not as advanced in Singapore as it is in other countries. But collaboration is taking place. One of the best illustrations is provided by the juvenile court where the social sciences are represented by the presence and contributions of social workers. There is also a nascent trend towards the incorporation of social science findings into the published work of legal professionals. Illustrations of this trend are the study on the development of law in Singapore by Andrew Phang,[36] and work on family law by Tan;[37] Lim, Ong and Mohan;[38] Cheang;[39] and Leong.[40]

Another feature that Singapore shares with other countries is that the concept of the family court was introduced locally by members of the legal profession rather than by social scientists. These lawyers[41] gave the same arguments in support of the family court that were originally introduced in the United States and the United Kingdom during the first half of this century as indicated earlier. More recently, a specific proposal to establish the Family Court in Singapore was presented by the Singapore Association of Women Lawyers (SAWL) to the Attorney General's Chambers.

While the SAWL proposal is still under consideration, there are no indications that Singapore may be spared all the challenges to the approval and implementation of the Family Court observed in the United Kingdom and in the United States. Just as their Western counterparts, our legal experts must consider, among other aspects, the implications of combining welfare with adjudication; the particular advantages of inquisitorial over adversarial

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[36] See Phang, *The Development of Singapore Law. Historical and Socio-Legal Perspectives* (1990).

[37] See Tan, "The Family, Social Policy and the Law in Singapore" (1985) 6 Sing LR 2.

[38] Lim, Ong and Mohan, "The Family Court – Why Singapore Should Adopt It" (1985) 6 Sing LR 6; and "Setting up a Unified Family Court in Singapore – Some Aspects" (1985) 6 Sing LR 12.

[39] Cheang, "Family Court: Let's Have It" [1985] 1 MLJ cxlviii.

[40] See Leong, *Family Law in Singapore* (1990).

[41] See Cheang, *supra,* note 39; and Lim, Ong and Mohan, *supra,* note 38.

proceedings; the operation of inquisitorial proceedings; and the specific role of social scientists in the Family Court setting. On the other hand, resistance to change, which is one of the main obstacles faced by American and British proponents of the Family Court, may not constitute a problem in Singapore. Change is a familiar situation for Singaporeans. Over the past two decades Singapore has been held as an international example of rapid change, whether economic, administrative or social, including recent innovations geared towards the streamlining of the judicial process.

Furthermore, Singapore's history indicates that the ideas behind a Family Guidance Service and the Family Court, as well as their suggested partnership, are not entirely new to the various ethnic communities that have shared this island as their home since Thomas Stamford Raffles founded Singapore in 1819. Historical records from those early years of the British colonial government in Singapore to the Malayanisation scheme in the 1950s, reveal two significant social features that may be seen as cultural precedents to the Family Court and the Family Guidance Service. These two social features were: the inclination of the Asian communities to request regulations from the British colonial authorities on matters pertaining to family relations; and the creation of the Chinese Protectorate.

Requesting Intervention

World history demonstrates that it is usual for colonised populations to manifest aversion to the interference of their colonial masters in matters pertaining to their private lives. Yet, contrary to expectations, there was a certain predisposition among the Chinese, Malay and Indian Muslim communities to seek the intervention of the colonial government in establishing regulations that would provide security and order in their lives. This apparent contradiction is understandable if one considers the favorable attitude towards authority among the Chinese, and the social situation of the immigrant population during the colonial era, particularly in the nineteenth century.

According to the analysis of Chinese law by Shapiro,[42] the Chinese accepted the moral and ethical principles justifying "a paternalistic authoritarian society" and thus "few Chinese questioned China's approach to law and order." But, Shapiro explains:

> What was questioned and reviled in bitter complaint, was the distortion and bypassing of the judicial system by cruel and corrupt officials, the ease with which the rich and powerful could escape punishment

[42] See Shapiro, *The Law and Lore of Chinese Criminal Justice* (1990).

> or buy favorable judgements, and the immense practical difficulties confronting persons of lower social status seeking a redress of grievances...[43]

Concerning the social conditions faced by most Chinese and Indian immigrants, life in colonial Singapore was characterized by a constant struggle to survive in an alien and often hostile social environment. Immigrant labourers were frequently at the mercy of secret society agents who "deceived and cheated them"[44] and it was common for these labourers to borrow the cost of their boat trip from China. This problem, as Turnbull suggests, led the labourers to a situation whereby "it was difficult to wipe out debt-bondage, and the hidden slavery of immigrant labour persisted for decades."[45] Those immigrants who did well enough to secure their survival had to persevere making a living and working hard to save and to support their families, left behind in their motherland. A few immigrants would go beyond just saving to become powerful entrepreneurs and leaders of their communities. But with wave after wave of fresh immigrants, particularly from China, the struggle for survival was confronted by every new poor, often indebted, and uneducated labourer stepping out of a vessel at the Singapore harbour during the nineteenth century and in the early years of the twentieth century.[46]

Female immigrants were not spared hardship. As the large majority of the immigrant labourers were males, either single or without spouses, the disparity in the sex ratio of the Chinese population was very large. Some historians assert that there were no Chinese female immigrants to Singapore before 1837.[47] Females made up only 14 per cent of the Chinese population in 1871, 16 per cent in 1881, and 18 per cent in 1891. One consequence of this imbalance was a high demand for prostitutes. Based on records kept by the colonial authorities,[48] it is estimated that 22 per cent of the Chinese women in 1871 were engaged in prostitution; this proportion fell to 14 per cent in 1881 and to 9 per cent in 1891.

Another consequence of the shortage of women was the introduction of the *mui tsai* system to Singapore. Under the *mui tsai* (literally "younger sister") system, poor parents gave their daughter to another family for a sum of money, ostensibly to give the girl a better home and for her to

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[43] See Shapiro, *ibid,* at 212.

[44] See Lee, *The British as Rulers – Governing Multiracial Singapore 1867-1914* (1991), at 61.

[45] See Turnbull, *A History of Singapore 1819-1988* (2nd ed, 1989), at 23.

[46] For a detailed description see Turnbull, *ibid,* and Lee, *supra,* note 44.

[47] See *Ng, Chinese Protectorate 1877-1900* (Unpublished Academic Exercise, History Department, University of Malaya, 1955), at 24. Ng quotes this figure from *Buckley, An Anecdotal History of Old Times in Singapore* (1902), Vol 1, at 320.

[48] See the details in Lee, *supra,* note 44, at 86.

be treated as a member of her new family. The young girl could be expected to work as domestic servant in her new household and her employer "was obliged to provide her with board and lodging and to marry her off suitable" once she reached the "marriable age" of eighteen.[49] In practice, however, these girls would be "resold" to brothel "procuresses" and taken out of China. The colonial authorities in Singapore and Penang found that "the large numbers of [female] children ... brought down from China in almost every steamer ... to be trained for prostitution", were registered as "coming here to join their husbands, and the procuresses are described as being their mothers."[50] This was a thriving trade in the colony because of the high value of "the girl-child" or *mui-tsai* "as a potential wife and mother which she would not possess to the same degree in a country where females were in the majority."[51]

The Indian and Malay communities in colonial Singapore shared with their Chinese counterparts a high probability of hardship and exploitation. Tamil immigrant labourers faced "a regularly organized system of kidnapping" and Tamil women would be "regularly recruited for prostitution in ... labour settlements" and subjected to "tragic" abuses.[52] The majority of Javanese immigrants were labourers who usually would come under "a notorious joint ... contract" whereby in exchange for an advanced sum of money to travel to Singapore, they had to promise that "If any of us should die or run away the persons who are left behind will be responsible for the payment of the said amount."[53]

This succinct look into the social conditions of the immigrant population helps to clarify the otherwise paradoxical records of petitions from the Asian communities in Singapore to the British colonial authorities to introduce regulations on family matters. Some brief illustrations of these petitions will suffice.

The Legislative Council of the Straits Settlements were presented with a petition signed "in Malay and Tamil characters" by 143 Muslims on 30 January 1877, requesting "better means for recording marriages and divorces" to improve the existing informal or haphazard method of recording these important events; the official appointment of a Muslim Registrar under the purview of the Registrar-General of the Colony; and the licensing by the colonial government of "Imaums" who should solemnise marriages and

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[49] These details are provided by *Chu, The Singapore Chinese Protectorate 1900-1941* (Unpublished Academic Exercise, History Department, University of Malaya, 1960), at 47. Chu referred to Purcell, *The Chinese in Malaya* (1948), at 180-181, as the source of this information.

[50] See Pickering, "Annual Report on the Chinese Protectorate for 1885," in *Legislative Council of the Straits Settlements Proceedings for 1885,* Appendix 4, at C14.

[51] See Chu, *supra,* note 49, at 51.

[52] See Lee, *supra,* note 44, at 156.

[53] See Lee, *ibid,* at 162.

divorces and who should be examined by the Registrar and Muslim experts concerning "their qualifications and integrity." The petitioners explained that if these regulations were not instituted, they

> fear that ... in future years their children may be without the means of providing the validity of their parents' marriages or their own legitimacy, and the title of property may be thereby greatly endangered.[54]

The Tamil Muslims or "Chuliahs," who arrived in 1786 preceding the Tamil Hindus, had already petitioned the Colonial authorities in November 1822 to appoint "a headman or Captain" to look after the interests of "the mercantile and labouring classes."[55]

Similarly, influential members of the Chinese community, or *towkays,* were well aware of the ordeals of the immigrant labourers and women. On 17 May 1871 they presented a petition to the Acting Governor requesting the appointment of "a trustworthy officer ... to superintend the *sinkhehs"* that is, the newly-arrived and indebted Chinese immigrant labourers, whom the towkays knew were "being deceived and cheated" by secret society agents.[56] A few years later, the Chinese community demanded government intervention to contain or solve the negative consequences of gambling among "the lower class Chinese" namely, that "people who gamble and lose, sell their wives and children."[57]

From 1908 to the mid-1940s, the Colonial government faced recurrent informal pressure and formal petitions from the Straits-born Chinese and the English-educated Chinese to formalize marriage registration. Groups of China-born Chinese strongly opposed those efforts arguing that it was their duty and need to preserve their cultural traditions, including polygamy and concubinage. The Colonial authorities vacillated between action and inaction and finally approved the Civil Marriage Ordinance in 1940 presenting marriage registration as optional.[58]

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[54] See Legislative Council of the Straits Settlements, "Petition from Mahomedan Inhabitants of Singapore, Praying for Legislation on the Subject of Mahomedan Marriage and Divorce" in Paper Laid Before the Legislative Council by command of His Excellency the Governor, Tuesday, 2 March 1877 (*Legislative Council ofthe Straits Settlements Proceedingsfor 1877, 1878*).

[55] See Lee, *supra,* note 44, at 159.

[56] See Lee, *ibid,* at 61.

[57] See Lee, *ibid,* at 119.

[58] For a detailed account of the various petitions and the factual response by the Colonial government, see Chu, *supra,* note 49, at 57-60. The interpretation of the government's response throughout this period as indecisiveness, is my own.

The Chinese Protectorate

The appointment by a colonial government of a headman to lead and represent his colonized community was a well-known practice before the British Colonial government set up the Chinese Protectorate in 1877. The "Kapitan China system" as this procedure was popularly called, had already been instituted by the Spaniards in the Philippines, by the Portuguese in Malacca, by the Dutch in the East Indies, and by the French in Saigon and Phnom Penh.[59] Added to these practical examples from other colonial powers, the British colonial government was (as explained earlier) under pressure from the Asian communities in Singapore to modify their policy of "letting the Chinese rule the Chinese" and to set up some fundamental regulations to protect the most disadvantaged immigrants.

The proposed post of Protector of Chinese was defined as "an administrator who should be a thoroughly trustworthy European," should be able to speak and write the Chinese language, and should be available "at all times [to] the population requiring his assistance or advice."[60] More important for the purpose of this discussion, however, is the transformation of this institution over the years under the personal initiative and leadership of the first Protector of Chinese, W.A. Pickering. The initial duties of the Chinese Protectorate were to oversee and administer matters concerning the registration of immigrants and secret societies. The immigrant labourers felt an urgent need for a reliable authority to resolve grievances and internal disputes, and that could replace the treacherous alternative of arbitration by secret societies. Thus, when the Protector was finally appointed and began his work, "the coolies looked on him as a godsend, and thousands came to have their disputes settled in his office."[61]

The area of work of the Chinese Protectorate was soon expanded by Pickering based on his investigations of the social conditions of the immigrants. His concern with the protection of girls and women led him to set up a 'Refuge' to house girls and women rescued from brothels. This Refuge was initially run by the Chinese Protectorate, but it latter developed into another institution, the *Po Leung Kuk* or "Office to Protect Virtue" managed by a committee of prominent *towkays* chaired by the Protector of Chinese. For the women and girls who were born in brothels, or were living or working in brothels, or were in danger of abuse in their homes, the *Po Leung Kuk* was at once (in modern parlance) a refuge, a training

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[59] See Lee, *supra,* note 44, at 63, for a detailed description.
[60] See Lee, *ibid,* at 69-70.
[61] See Lee, *ibid,* at 85.

centre in reading, writing, and household skills, a counselling center, and a caring matrimonial agency.[62]

As the Protector of the Chinese, Pickering created a style of intervention that suited well the community under his supervision. He "exercised his duties in a manner very similar to that of a village headman ... with one distinction ... he was generally incorrupt and accessible to everyone while the Mandarin in China was corrupt and could not be easily contacted by the villagers".[63] This approach and the pioneering roles of the Chinese Protectorate as an arbitrator and reconciliation agency in family matters, increased its prestige among the Chinese community. Nevertheless, Pickering's success in combining quasi-judicial activities and administrative duties was not viewed positively by the legal profession. In his 1878 Annual Report to the Straits Settlements Legislative Council he declared:

> it has been alleged both by occupants of the bench and by certain sections of the public that the Protectorate of Chinese virtually usurps in many cases the functions of the Magistrates, besides interfering with the legitimate work of the local bar.[64]

Pickering recognised this problem of faint boundaries between the legal and judicial aspects of the Chinese Protectorate's work on the one hand, and his administrative role of arbitrator and counsellor in community and family disputes on the other. This delicate issue of identifying and respecting the boundaries between various authority and expertise domains is an important part of the current discussion on proposals to set up the Family Court and the Family Guidance Service.

In sum, historical evidence from Singapore's colonial past show the need felt by the Asian communities for an institution that would provide equitable, prompt, and affordable arbitration in non-criminal matters including family relations and obligations such as marriage, adoption, inheritance, and divorce. The response of the colonial government to this need was hesitant. Still, they responded by providing some legislation (on immigration, secret societies, communicable diseases, and the protection of women and girls, among other aspects), and by setting up institutions such as the Chinese Protectorate, and the Refuge house for women and girls, and by encouraging the formation of the *Po Leung Kuk.*

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[62] For interesting descriptions of these activities of the Chinese Protectorate, the Refuge and the *Po Leung Kuk,* see Lee, *ibid,* at 91-92; Chu, *supra,* note 49; Ng, *supra,* note 47; and Wu, "The Chinese Protectorate III - Campaign Against Social Evils" *Pinang Sunday Gazette, 22* March 1959, 7-8.

[63] See Chu, *supra,* note 49, at 14.

[64] As quoted by Lee, *supra,* note 44, at 85.

The Proceedings of the Straits Settlements Legislative Council which include the Annual Reports on the Chinese Protectorate, do not have a specific classification of cases dealt with by the Chinese Protectorate. Thus, it is not possible to ascertain precisely the proportion of family or domestic cases brought to the attention of the Protector of the Chinese. Notwithstanding the absence of precise figures, historians' analyses of other relevant documentation have led them to suggest that family-related cases occupied a considerable amount of the Protector's time.[65] Moreover, the nature of the Chinese Protectorate's work implies that it was the Colonial precursor of the Family Court in some respects, just as the work carried out by Pickering may be seen as resembling the idea of reconciliation and counselling activities of the proposed Family Guidance Service.

Finally, Singapore offers today a very conducive infrastructure for the establishment of both the Family Court and the Family Guidance Service. There are already family counselling services both in the private and public sectors that could serve as part of the Family Guidance Service network. And, of course, professional expertise is available from both the legal and the social sciences fields. Two things are needed as the next step in improving the community's response to families facing conflict in Singapore. First, we need a concerted effort to conduct detailed and multi-disciplinary studies on the feasibility of the Family Court and the Family Guidance Service, as well as on the feasibility of their partnership. Secondly, but equally important: we need the Government's political will to support these concepts and to assist in improving the current national response to families in conflict.

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[65] The following historians concur that family problems constituted an important part of the work done by the Protector of Chinese: Purcell, *supra,* note 49; Turnbull, *supra,* note 45; Chu, *supra,* note 49; Ng, *supra,* note 47; and Lee, *supra,* note 44.

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