

Mr. William Pincus (cont.)

This seems to produce more chance of success than the older methods of law reform used by the Conference in its earlier efforts in both commercial and family law. The Conference believes that in many ways it is the only organization with the talent and method of operation capable of producing on a national scale both the intellectual and practical consideration of a major state problem. There is the necessity of broad-based deliberation on, and scrutiny of, proposals by practicing lawyers, law professors and judges familiar with the law subject involved. The regular procedure of the National Conference helps produce this deliberation. It customarily opens its meetings to representatives of other groups and its drafting is co-ordinated with the work of the American Bar Association and is approved by it. Secondly, a great amount of research and study is necessary as to the laws and practices on the subjects considered for deliberation. Finally, the National Conference can, as experience demonstrates, produce that disinterest in view point necessary to secure confidence in sponsorship. While the state Commissioners on Uniform State Laws are obliged to endeavor to obtain enactment of uniform acts, they have no special interest to represent other than that of uniformity of state law wherever uniformity is desirable.

The need for reform and uniformity in the field of family law is evident in many ways. For one thing, current marriage and divorce doctrines discriminate against the poor. Dean Pound, in *The Spirit of the Common Law*, 211-212 (1921), suggests that discrimination against the poor is not a new phenomenon. His story concerns an English judge sentencing a workingman convicted of bigamy at a time prior to the creation of statutory grounds for absolute divorce.

On being asked what he had to say why sentence should not be pronounced, the accused told a moving story of how his wife had run away with another man and left him with a number of small children to look after while barely earning a living by hard labor. After waiting several years he remarried in order to provide a proper home for the children. Mr. Justice Maule shook his head. "My good man," said he, "the law did not in any wise leave you without a sufficient remedy. You should first have brought an action in Her Majesty's Court of Common Pleas against this man with whom, as you say, your wife went away. In that action, after two or three years and the expenditure of two or three hundred pounds you would have obtained a judgment against him

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which very likely would have been uncollectible. You should then have brought a suit against your wife in the ecclesiastical court for a divorce from bed and board, which you might have obtained in two or three years after expenditure of two or three hundred pounds. You would then have been able to apply to Parliament for an absolute divorce, which you might have obtained in four or five years more after spending four or five hundred pounds. And," he continued, for he saw the accused impatiently seeking to interpose and to say something, "if you tell me that you never had and never in your life expect to have so many pennies at one time, my answer must be that it hath ever been the glory of England not to have one law for the rich and another for the poor."

The "principle" requiring one law for both rich and poor still operates, of course, and still subjects the poor to invidious discrimination. Any New York couple ~~without funds to finance one spouse's overnight trip to Mexico~~ is not treated equally by the state's law -- since New York courts have never accepted as valid exclusively "mail order" Mexican divorces.

Marriage and divorce doctrines discriminate against the poor in other ways as well. In recent years state and federal welfare and social insurance programs have been greatly expanded. Benefits under many of these programs are paid to "wives" and "children" -- and the definitions of these terms refer to state marriage and divorce laws (or, occasionally, to probate provisions) designed for quite different purposes. A great many persons, without education, without adequate legal advice, perhaps without funds to obtain a divorce, establish stable, long-continuing, family relationships; but because these relationships do not fit the state's description of a valid marriage, a spouse and children may be denied a workmen's compensation claim for federal OASDI benefits. In only about fifteen states can "common law marriage" doctrines still be used to give recognition to de facto family relationships. Even in these states, "as foreign as the statement of legalistic standards may be to the illiterate and ignorant who are so frequently participants in these relationships, the law rigorously exacts evidence of a present intention to be husband and wife and where words, conduct and other evidence indicates the intent that marriage should take place sometime in the future, neither the continued living together nor the holding out as man and wife is sufficient." *Hobby v. Burke*, 227 F. 2d 932, 933n. 2 (5th Cir. 1955). The same court reversed