

which have been published by writers like Bowett and Seyersted on the legal nature of peacekeeping operations. It shows the background against which the lawyer has had to frame his regulations and indicates why what has often looked like a simple legal situation readily amenable to settlement, has in fact turned out to be highly dynamic, politically unstable and seemingly beyond reach of legal regulation.

From the point of view of the reader all these books supplement one another, going from the theory of law and its purpose as an establisher of order to the difficulties that lie in the way of those who would seek to rule the world by legal rules and legal methods.

—L. C. GREEN

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\* University Professor, University of Alberta.

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**POLISH FAMILY LAW.** By Dominik Lasok; with a chapter on Adoption, by Ludwit Frendi. Law in Eastern Europe, No. 16. Leyden: A. W. Sijthoff. 1968. 304 pp. inc. index.

The author of this book, Dominik A. W. Lasok, is to be congratulated for writing on a subject on which little has been previously written. This book is number sixteen of a series of publications brought out by the Documentation Office for East European Law at the University of Leyden.

Professor Lasok remarks that this book is intended to be neither a text book of Polish Family Law nor a comparative treatise in the accepted sense of the term. It has been written with the limited aim of providing a rudimentary exposition of the salient features of the system of Family Law now in force in the Polish Peoples' Republic and is set against their historical background. It is to be remarked, however, that he has gone beyond his stated aim for he has not only referred to other systems of laws such as Canon Law, Swiss Law and English Law but also to the decisions of the Polish Supreme Court and current juristic writings. He has drawn attention to contrasts and similarities between "socialist" and "capitalist" law, and in doing so, challenged some of their conclusions.

When Poland was drawn into the Soviet orbit, Polish family law, like the law of the other countries of the Eastern bloc, underwent strong Soviet influence. The basic concepts and institutions of Soviet law were copied: full equality of the husband and wife; the "unified divorce", cause of the breakdown of marriage; a marriage property system based on a community of acquisitions. On the other hand, Polish legislation showed a certain independence in the field of parent and child by embracing the earlier principle of Soviet law concerning the equality of legitimate and illegitimate children at the time when Soviet legislations had thrown away this principle. Within the last two decades, to shape the Marxist ideas into codes of law, three major codifications of Family Law were made, and the Code of 1964 is the subject of Lasok's present study. Despite these modifications, the Code of 1964 contains many parallels with the Western Law. Major changes in the law have been noted in this book.

The two main topics that are discussed are the law of Husband and Wife and the Law of the Family. Other topics such as Adoption, Guardianship, Legitimation, Conflict of Laws, etc. are dealt with briefly. The texts of the Polish Family Law and the statute on Private International Law are translated into English and are included in the appendix. Anyone wishing to go deeper into the subject will find the bibliography very useful.

Since 1945 marriage has been a purely secular institution in Poland and the civil form is the only form recognized by law whereas, under the former law, a religious ceremony was sufficient. The Polish legislators have emphasized the institutional and social aspects of marriage. No one would argue with the present Polish conceptions of marriage. The author points out:<sup>1</sup>

Marriage is not a mere contract; it is an institution which must fulfil a social function in which the well-being of society and its most vulnerable members finds its most vivid expression. If it fails, divorce ought to follow to adjust the factual relations between the spouses but it follows only as a necessary evil. Divorce must, therefore, be administered by courts whose function is to ascertain whether a marriage has broken down, and to reconcile the parties, should their restoration to the single state work hardship on their children or society.

The minimum age required for a valid marriage is not the same for both sexes. It is eighteen for females and twenty-one for males. The prohibition is not absolute because the Guardian Court may "for grave reasons" grant permission to males over eighteen and females over sixteen years of age to marry. Polish law is thus out of step with other socialist laws, where the marriage age was fixed at the age of majority, that is, at eighteen for both sexes.

The ancient canon law remedy of annulment of marriage is reduced to a minimum. According to the Polish legislators divorce is preferable. Non age, lack of mental capacity, prior marriage and consanguinity are made grounds for annulment in the new Polish Code. Under Polish law, marriage is invalid only if there is an absence of the *verba de praesente*. It would seem therefore, that even a "sham marriage" would be regarded as valid. It is interesting to note that the Polish Code has gone further than the Swiss Code by providing the rule that any bigamous marriage, even contracted *mala fide* and with full knowledge of the existing bond, will by operation of law, become valid as soon as the impediment has disappeared.

Judicial separation is unknown to Soviet law. It was abolished in Poland in 1945. It may also be said that in England, Canada and the United States, decrees of judicial separation are rare. This decree is sought mainly by petitioners with conscientious objections to divorce and by some wives who, while refusing to give their husbands their freedoms, require the help of the court in connection with maintenance and matters relating to children. It is likely that petitions for judicial separation will become still fewer due to the introduction of new grounds for divorce, that is, that the marriage has irretrievably broken down.

The Polish law of 1945, following the traditional approach, provided as many as eleven grounds for divorce. Five years later, these grounds were abandoned in favour of the Soviet system of one

<sup>1</sup> Lasok, *Polish Family Law* 38.

comprehensive ground for divorce, that is "the complete and permanent breakdown of the marriage". In this part of the book, the author masterfully discusses the meaning of matrimonial breakdown, the principles and problems of guilt and recrimination, ancillary aspects of the guilt principle (that is, maintenance and the custody of the children), public policy, divorce procedure, conciliation proceedings, trial, judgment given in default of appearance, and the effects of the decree of divorce.

The equality of the spouses is not an empty slogan. It is a legal rule enshrined in the Constitution and carried into effect in the Code of Family Law. Thus in Chapter seven, the author points out that both husband and wife must contribute and should do all within their ability and means to satisfy the needs of the family. The claim of a spouse for maintenance arises if the spouse, in spite of his incapacity to work, has sufficient reasons.

In Chapter fifteen, one may note that one of the outstanding features of Polish law is the elaborate system of family maintenance. In general terms the duty of maintenance rests upon persons related to one another in a direct line of consanguinity, that is, parents and children, grandparents and grandchildren, and so on. Among collaterals, only brothers and sisters are liable to maintain one another. Descendants always have priority over ascendants, and the latter over brothers and sisters. The justification for such elaborate provision is to strengthen the family as a social and economic unit and to relieve the national exchequer of the burden of providing financial assistance for needy citizens. In Poland there are a great number of litigations to enforce maintenance but the machinery for such enforcement does not appear to be simple. The author aptly remarks, "In every social system blood is thicker than water, but the purse is only too often insensitive to its claims."<sup>2</sup>

The reviewer would like to conclude, that the result of Lasok's labour is a very scholarly work and the best book available on this subject. It will prove to be useful to comparative lawyers, sociologists, students of European studies, and those who are interested in comparative family law problems.

—S. KHETARPAL\*

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<sup>2</sup> *Id.* 90.

\* Of Gray's Inn, Barrister-at-Law, of the Faculty of Law, University of Alberta, Edmonton.