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Book Review: *Fifty Years in Family Law: Essays for Stephen Cretney* (Rebecca Probert & Chris Barton Eds. 2012)

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Book Review

Fifty Years in Family Law: Essays for Stephen Cretney (Rebecca Probert & Chris Barton eds. 2012)

Review by NANCY E. DOWD*

This collection honors the life and work of Stephen Cretney,¹ the pre-eminent British scholar of family law, author of an amazing range of work, including most famously his exhaustive history, *Family Law in the Twentieth Century: A History* (Oxford 2003) (*History*). His prolific scholarship and broad range of interests meant that his work touched virtually every area of family law, particularly those that have been in enormous flux over the past fifty years: marriage, cohabitation, adoption, division of marital property, and other changes to divorce, private ordering, alternative dispute resolution and, the child welfare system. Virtually no corner of British family law escaped his scrutiny, careful analysis, and evaluation. Cretney is remarkable also for the range of venues in which he has worked, which includes service on the Law Commission, teaching as a fellow at Exeter College in Oxford, a chair at the University of Bristol, and a return to Oxford where he is an emeritus fellow. The scholars assembled in this volume are a testament to his broad influence as well as the personal connections and affection that he engendered over a lifetime.

If one wanted an entrée to what has evolved in the United Kingdom over the past half century in family law, this is an incredibly useful volume. As noted by Sanford Katz, the lone American scholar in the collection, the institutional and political context is clearly quite different from

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1. FIFTY YEARS IN FAMILY LAW, ESSAYS FOR STEPHEN CRETNEY (Rebecca Probert & Chris Barton eds., Cambridge: Intersentia 2012) [hereinafter FIFTYEARS].

the United States.² Many of the chapters allow us inside the inner workings of this different context, whether it is in examining the history of particular legislation (such as the chapter by Christine Piper that peels the outer layers off the real political history of the Factories Act of 1844 and the Family Law Act of 1996)³ or the operation and failed goals of other legislation (such as the chapter on the failed child welfare reform of judicial case management by Judith Masson).⁴ The chapters on the Law Commission reveal an entirely different origin of family law reform that is top down and universal.⁵ This is quite different, as Katz notes,⁶ from the bubbling-up pattern of much American family law (despite increasing federalism), with legal reform emerging from cases or legislation in particular states that eventually sparks a more universal change, but also permits much differentiation and experimentation (or confusion and inconsistency, depending on one's perspective).

On the other hand, it is striking, given the breadth of the subjects in this volume, that so many of the trends and challenges in family law in the United Kingdom are parallel to those in the United States. Katz in his chapter takes us on a tour of divorce reform (property and child custody), rights of unwed fathers, child welfare reform, adoption law changes, the acceptance of prenuptial agreements, recognition of cohabitation rights, reproductive technologies and their effect on parenthood, and same-sex marriage.⁷ With the exception of reproductive rights and technologies, virtually every other area of British law in these subject areas is touched upon in the chapters in this volume. There are remarkable parallels as well as differences as to which social changes have resulted in changes in the law in each country at different times and with different history. Prenuptial agreements, for example, which are discussed in the chapter by Joanna Miles,⁸ have only recently gained some recognition in the United Kingdom, while they are unremarkable in the United States in terms of recognition, albeit still not utilized in most marriages.

The introduction to the volume provides a biography of Cretney and an

2. Sanford N. Katz, *Fifty Years in the Transformation of American Family Law: 1960–2011*, in FIFTY YEARS, *supra* note 1, at 303.

3. Christine Piper, *Child Focused Legislation: For the Sake of the Children?*, in FIFTY YEARS, *supra* note 1, at 71.

4. Judith Masson, *A Failed Revolution: Judicial Case Management of Care Proceedings*, in FIFTY YEARS, *supra* note 1, at 277.

5. Brenda Hale, *Collective Responsibility: Law Reform at the Law Commission*, in FIFTY YEARS, *supra* note 1, at 7; Joanna Harwood & Penny Lewis, *A Paeon for the Law Commission: A View from the Inside*, in FIFTY YEARS, *supra* note 1, at 21.

6. Katz, *supra* note 2.

7. *Id.*

8. Joanna Miles, *Marital Agreements: "The More Radical Solution,"* in FIFTY YEARS, *supra* note 1, at 97.

overview of the volume.⁹ The breadth of his career and his various roles is evident, as each chapter is connected to or inspired by some aspect of his work. The first two chapters by Baroness Brenda Hale,¹⁰ and Joanna Harwood and Penny Lewis,¹¹ provide insight into the Law Commission, including its current work today. This is followed by Simon Rowbotham's examination of Cretney's textbook on family law, *Principles of Family Law*, first published in 1974, now in its eighth edition with a new group of family law scholars (Judith Masson, Rebecca Bailey-Harris, and Rebecca Probert).¹² The next chapters focus on the interplay between academics and the judiciary (Stephen Gilmore)¹³ and the process of law reform (Christine Piper).¹⁴

This is followed by a number of chapters that focus on substantive law that was of interest to Cretney or was touched on in his influential *History*. These include illegitimacy, prenuptial/marital agreements, cohabitants and civil unions, marriage as a civil rite, matrimonial property regimes, adoption, wardship, laws of succession, and several chapters on divorce, including private ordering at divorce, divorce reform regarding adultery, a second chapter on financial consequences of divorce, and the principles of autonomy versus vulnerability. There are many wonderful insights in these chapters. A particularly interesting piece by Andrew Bainham shows the evolution of rules about illegitimacy and touches on the treatment of nonmarital fathers and the definition of legal fatherhood, issues that continue to confound and challenge U.S. law as well.¹⁵ Gillian Douglas' fascinating chapter on autonomy versus vulnerability as principles in financial settlements in divorce echoes the rise of vulnerabilities analysis by Martha Fineman and others.¹⁶ Rebecca Probert's chapter comparing marriage and civil partnership in the rite of marriage itself is also fascinating, given debates over defining marriage equality in the United States. There is a parallel equality debate in the United Kingdom about ensuring both statuses, marriage and civil partnership, as available to all, rather than a marker of same-sex versus opposite sex couples.¹⁷

9. Rebecca Probert & Chris Barton, *Introduction*, in *FIFTY YEARS*, *supra* note 1, at 1.

10. Hale, *supra* note 5.

11. Harwood & Lewis, *supra* note 5.

12. Simon Rowbotham, *In the Matter of Cretney v. Bromley (1974): Steven Cretney's Principles of Family Law*, in *FIFTY YEARS*, *supra* note 1, at 39.

13. Stephen Gilmore, "Why Should They Cite Us?": *Lessons from an "Uncommon" Family Lawyer's Influence on the Common Law*, in *FIFTY YEARS*, *supra* note 1, at 57.

14. Piper, *supra* note 3.

15. Andrew Bainham, *The Illegitimacy Saga*, in *FIFTY YEARS*, *supra* note 1, at 83.

16. Gillian Douglas, *Simple Quarrels? Autonomy v. Vulnerability*, in *FIFTY YEARS*, *supra* note 1, at 217.

17. Rebecca Probert, *Civil Rites*, in *FIFTY YEARS*, *supra* note 1, at 121.

In the final segment of the book, the primary focus is on process, including family mediation, arbitration in the context of Islamic marriages, case management proceedings in child welfare cases, and Mavis Maclean's wonderful examination of private versus public, or the move to greater transparency and openness as a means to counter critiques of family court bias.¹⁸ Ruth Deech also looks at the evolution of the role of the bar, which has changed considerably over this timeframe.¹⁹ The volume ends with a chapter on royals and marriage, using the second marriage of King Leopold III of the Belgians, inspired by the work of Cretney on royal marriages in the United Kingdom.²⁰

For those wanting an entry point into British family law, this is a wonderful volume. For those who know it well and admire the work of Stephen Cretney, as well as the work of this preeminent group of scholars, it will also be of much value as a remarkable group of essays. As an example of life's work that we all might hope to achieve, in many manifestations, but with dedication to the common good, it is a model to which we all hopefully aspire.

18. Mavis Maclean, *Openness and Transparency in the Family Courts: A Policy Journey 2005–2011*, in *FIFTY YEARS*, *supra* note 1, at 297.

19. Ruth Deech, *Regulating the Bar*, in *FIFTY YEARS*, *supra* note 1, at 265.

20. Walter Pintens, *A Royal and Constitutional Affair: the Second Marriage of H.M. King Leopold III of the Belgians*, in *FIFTY YEARS*, *supra* note 1, at 317.