

BOOK REVIEWS

M.D.A. FREEMAN, ed., THE STATE, THE LAW AND THE FAMILY, TAVISTOCK PUBLICATIONS LTD.
Sweet and Maxwell Ltd., London, 1984
pp. xi + 318

This is a compendium of writings on Family Law by sixteen of the foremost English scholars of the discipline, plus one Scottish and one Dutch expert. It is an outstanding collection, conspicuous by its realism, topicality and relevance to the social problems of the family.

The book is divided into four parts. The first, *Women, the State and the Law*, is written largely for a feminist perspective. Carol Smart, who has a refreshingly breezy style of writing, challenges the conventional English wisdom, exemplified in the Matrimonial and Family Proceedings Act 1984, of placing the primary burden of maintaining an ex-wife on the husband. She argues indeed against any reduction of State benefits, especially for working-class women. This theme is taken up by Hilary Lang, while the third essay, by Jan Pahl, is an intriguing study on the "political economy of the household". Miss Pahl cites several types of household to illustrate the remarkable diversity of financial arrangements that obtain among on-going families as to housekeeping allowances and the management of household affairs.

Undoubtedly one of the major essays in the collection is by the editor, Michael Freeman. Mr. Freeman reveals himself as a rare bird indeed, a male feminist. His piece on Domestic Violence is based on the premise that the law has a most significant role to play, and has so far done very little. The few cases which have provided a remedy to battered women are the exceptions that prove the rule that essentially the law has done nothing to improve the overall position of women. The reason for domestic violence, in Mr. Freeman's view, is not to be sought in psychological failings of individuals, but rather in social or cultural injustice. Mr. Freeman, who writes powerfully and persuasively, concludes with a diatribe against the immunity of husbands who rape their wives.

Katherine O'Donovan's essay poses the doctrinal problem, should the law provide special protection for women or should it aim at perfect equality? Her conclusion, that equality in all things should be sought, seems to me rather facile. Surely pregnant working women should be given some special protection for women or should it be their own benefit, rather for that of their embryo.

Most readers of this journal will probably find Part 2 of the book of most immediate relevance. For it deals with children, and

highlights the perennial problem of family autonomy versus state intervention.

An outstanding essay by Robert Dingwall and John Eekelaar considers the criticism that the state has been intruding more and more into family life. The statistics, they say, do not justify any sinister inferences. The authors support greater use of procedures for termination of parental ties when emotional harm is foreseeable. And while they frankly acknowledge that recognition of children's interests necessarily entails the abridgement of family autonomy, they have no qualms about advocating the greater use of interventive powers.

This position is challenged, however, by both Madeleine Colvin and Michael King, in Chaps. 7 and 9. Miss Colvin argues that there are too many children in care. By intervening, the State is abdicating its responsibility to provide services to prevent children from being separated from their natural family. Mr. King also cavils with Mr. Eekelaar. In a valuable comparison he adjudges the English juvenile jurisdiction much inferior to that of the *juges des enfants* in France. These judges actively seek co-operation with parents, and moreover, there is a flexible machinery for periodic review of wardship in France. Anyone with an interest in a child, including the child himself, may apply to any time to the *juge des enfants*, who is obliged to consider whether to terminate the wardship.

That English (and Australian) Law has much to learn from European wisdom is also clear for a most humane and perceptive essay by Madzy Rood-de Boer, probably the best-known Dutch Family Lawyer. Mme. de Boer is inclined to lament the diminution of state intervention in Holland.

Susan Maidment (Chap. 10) looks at the effect of children on divorce. She is critical of the philosophical basis of the provision by which a divorce can be refused if the judge is not satisfied with the arrangements made for the children. (Cf. Family Law Act 1975, s.63). For my part, I find this provision not only justifiable but scandalously glossed over. Nor can I unequivocally accept Mrs. Maidment's thesis that the effects of divorce on children are "not as serious as is believed". (p.177)

Part 3 deals with financial aspects of family law, and once again reveals the tensions between public and private responsibilities for the victims of family breakdown. Jennifer Levin is critical of the new Matrimonial and Family Proceedings Act, surely the *bête noire* of this team! She pours wrath on the successive British governments that have failed to implement the recommendation of the Finer Committee (1974) that a guaranteed maintenance

amount be paid to single parents. She advocates a Child Support procedure, quite separate from the proceedings ancillary to divorce by which child maintenance is usually assessed. It is difficult not to agree that the maintenance awarded to child victims of divorce is scandalously low and imperfect in its enforcement.

Dr. Eric Clive analyses recent Scottish proposals for deferred community of matrimonial property. This essay is particularly topical in Australia.

John Eekelaar and Mavis Maclean neatly analyse the types of wives who seek maintenance in divorce cases, and consider that the law should prescribe different rules for childless marriages and those where children are involved.

Judith Masson's essay deals with the thorny question, whether a step-parent should be permitted to adopt the child of his new spouse. She would abolish this practice altogether. She points out that, despite the provision of the Childrens Act 1975, discouraging adoption of step-children, in fact many adoption orders are still being made.

Ruth Deech (Chap. 15) points to the unsatisfactory state of English matrimonial property law.

Part 4 of the book deals with proposals for family courts and for conciliation in divorce cases. The essays of Elizabeth Szwed, Antonia Gerard and Ann Bottomley all reveal great dissatisfaction with English tribunals which deal with family matters. It is, perhaps, a pity that an Australian scholar was not called upon to give an account of the Family Court of Australia, which, frankly, is far ahead of the models studied by the said authors.

This is undoubtedly the most important collection of essays on English Family Law that has yet been compiled. It reveals great scholarship, wisdom and humanity, and justifies careful consideration by Australian scholars of laws and other disciplines who are grappling with similar issues.

Apart from consistent mis-spelling of the noun, "dependant", and the bizarre plural, "guardian ad litem" (p.270), the only serious stylistic solecism that I could trace was Miss Masson's constant use of "she/he", "her/him" and "her/his". No doubt she would claim this as a victory for "non-sexist" language, but let her re-write 'Paradise Lost' in this fashion, and we shall see how Masson compares with Milton.

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