

FIFTY YEARS IN FAMILY LAW: ESSAYS FOR STEPHEN CRETNEY



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Edited by
Rebecca PROBERT
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intersentia

Cambridge – Antwerp – Portland

Intersentia Publishing Ltd.
Trinity House | Cambridge Business Park | Cowley Road
Cambridge | CB4 0WZ | United Kingdom
Tel.: +44 1223 393 753 | Email: mail@intersentia.co.uk

Distribution for the UK:
Hart Publishing Ltd.
16C Worcester Place
Oxford OX1 2JW
UK
Tel.: +44 1865 517 530
Email: mail@hartpub.co.uk

Distribution for the USA and Canada:
International Specialized Book Services
920 NE 58th Ave. Suite 300
Portland, OR 97213
USA
Tel.: +1 800 944 6190 (toll free)
Email: info@isbs.com

Distribution for Austria:
Neuer Wissenschaftlicher Verlag
Argentinierstraße 42/6
1040 Wien
Austria
Tel.: +43 1 535 61 03 24
Email: office@nvw.at

Distribution for other countries:
Intersentia Publishing nv
Groenstraat 31
2640 Mortsel
Belgium
Tel.: +32 3 680 15 50
Email: mail@intersentia.be

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

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Cambridge – Antwerp – Portland
www.intersentia.com | www.intersentia.co.uk

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ISBN 978-1-78068-052-1
NUR 822

British Library Cataloguing in Publication Data. A catalogue record for this book is available from the British Library.

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FOREWORD

I have had the privilege to be the first to read this book of essays, in proof, from soup to nuts. It is a great collection. For a great man.

Stephen Cretney's modesty, so widely acknowledged in these pages, would lead him to downplay the significance of his contribution to the beneficial development of family law during the last 50 years. In fact, however, its significance is hard to overstate. It goes much wider than the quality of his contribution as a Law Commissioner, important though that was. Prior to 1970, as Stephen has demonstrated in his towering *History*, family law was deeply impoverished. One important reason was the lack of academic interest in it. The two rival manuals for use by practitioners – *Rayden* and *Latey* – expounded it but were (as one would expect) largely uncritical of it. Writers like A.P. Herbert had lampooned its most egregious absurdities. But there was little intellectual analysis of it, in particular of its archaic and futile hunt for matrimonial 'guilt' and 'innocence' as the determinants of legal rights.

But things changed with the advent in the 1960s of family law as a subject of undergraduate study. The fascinating complications inherent in the application of law to family relationships led many students to exercise the option to study it. Generations of them began to read and write about it. Then they moved on. Many became lawyers; some later became judges. A few became politicians. But, whatever they were doing, these graduates helped to widen the debate. Family law became a matter of national discussion. The result was that over the years beneficial changes in it were wrought both by legislation and also, massively if imperceptibly, by judicial decision. Legal academic study had discharged one of its most important functions: it had fertilised the law. Today family remains the area of law which attracts about the highest level of public interest – up there with criminal sentencing and the reach of Article 8 of the European Convention.

Credit for the achievement of putting family law on the map as an important subject for academic study must go to quite a few people, including – very definitely – some of the writers of these essays. Here, however, Stephen's insistence on fairness, hovering over me, guides my pen to identify the seminal contribution of the late Peter Bromley. You must read the essay on the great case of *Cretney v. Bromley* in 1974: it's riveting. Yet no one would object to my identification of Stephen himself as perhaps the most influential single

contributor to this achievement. His contribution was by his inspirational book *Principles*; by his lectures; by the breadth of his other legal activities and the energy with which he pursued them; by the respect for family law which his intellectual stature engendered among lawyers in other fields; and by his profound and stimulating expositions of issues in family law, never too hard to understand, which, like a magnet, drew those who read and heard them into a real and lasting interest in them.

This collection of essays is worthy of Stephen. They fall across a wide spectrum of subjects relating to family law and are written with astonishing clarity, originality and intellectual sophistication. Above all, however, they exude the warmth of one of those glorious English summer days of which we have about six each year. This, says each page, is for Stephen. The affection for the man is palpable.

Nicholas Wilson
Candlemas, 2 February 2012

The Supreme Court

ACKNOWLEDGEMENTS

We are grateful to Baroness Ruth Deech for arranging the planning meeting at the House of Lords and to Warwick Law School for providing funding for participants' travel. Similar thanks are due to Dr Susan Jenkinson of Staffordshire University Law School and to All Souls College for the launches at Stoke-on-Trent and Oxford respectively. Finally, much is owed to Ms Cheryl Morris for taking time off work and to Mrs Joan Morris for coming out of retirement to proof-read this book and to Ms Ann-Christin Maak of Intersentia for not allowing her honeymoon to interfere with the vital assistance she provided. We thank them all.

We are pleased to say that, at Stephen Cretney's request, all profits from the sale of this book will go to the National Association for the Care and Resettlement of Offenders (NACRO), and we are deeply indebted to Intersentia for their generosity in taking no profit from the publication themselves.

Rebecca Probert
Chris Barton
March, 2012

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Chris Barton is Emeritus Professor of Family Law (Staffordshire University), Academic Door Tenant at Regent Chambers, an Emeritus Member of The Society of Legal Scholars and a Vice-President of the Family Mediators Association. He has taught family law since before the Divorce Reform Act 1969 and is author, co-author and part-author of a number of books. He has also published in learned and professional journals and in broadsheet newspapers. Stephen Cretney, who gave him the honour of being the England and Wales Law Commission's first researcher (1982/83), has since been his major source of professional inspiration and advice.

Elizabeth Cooke is a Solicitor; she qualified in 1988. In 1992 she became a lecturer in law at the University of Reading, and was awarded a personal chair in 2003. She has published on many topics within family law and land law, and particularly on land registration and on family property. In 2008 she was appointed a Law Commissioner for England and Wales, for a five-year term until 2013, which has now been extended to 2016; as a Commissioner she has particular responsibility for family and property law projects.

Ruth Deech, now Baroness Deech of Cumnor DBE, started her career as an assistant to the family law team at the Law Commission; then she taught law at Oxford University, where she was for a while a colleague of Stephen Cretney's. They are fellow honorary benchers of the Inner Temple. Baroness Deech was Principal of St Anne's College Oxford from 1991–2004, a pro-Vice-Chancellor, and is now an Honorary Fellow of the College. She was chair of the Human Fertilisation & Embryology Authority from 1994–2002, a Governor of the BBC from 2002–2006, a trustee of the Rhodes Scholarships from 1996–2006.

After retiring from Oxford she became the first Independent Adjudicator for Higher Education, resolving student complaints from all the universities in England and Wales. She is Gresham Professor of Law 2008–2012 and chair of the Bar Standards Board from 2009. In 2005 she was created a Life Peer and sits as a crossbencher in the Lords.

Gillian Douglas obtained her LLB at the University of Manchester and her LLM at the University of London (LSE). She became a Lecturer in Law at the University of Bristol in 1978, and spent a year as a Visiting Teaching Fellow at the National University of Singapore in 1983/84, before moving to Cardiff University in 1989 where she has remained, becoming Professor of Law in 1998 and serving as Head of the Law School between 2005 and 2010. She had the great good fortune to work with Stephen Cretney during her time at Bristol University, sharing the teaching of Family Law with Stephen and Nigel Lowe, and becoming, with the two of them, a Case Reports Editor for the journal, *Family Law*, an association which Stephen initiated in 1986 and which Gillian continues. She is co-author (with Nigel Lowe) of the 9th and 10th editions of *Bromley's Family Law* (1998, 2007) and (with Chris Barton) of *Law and Parenthood* (1995) and has written numerous other works, including *An Introduction to Family Law* (2001, 2004). She was awarded an LLD by Cardiff University in 2011 for her contribution to scholarship in the field of Family Law.

John Eckelaar was Fellow and Tutor in Law at Pembroke College, Oxford from 1965 to 2005, sharing some family law teaching with Stephen Cretney when Stephen was Tutorial Fellow of Exeter College between 1969 and 1978. He was a founder member of the International Society of Family Law, and founding co-editor of the *International Journal of Law, Policy and the Family*. He has written and researched widely in family law. He was elected a Fellow of the British Academy in 2001 and Distinguished Visiting Fellow by the New Zealand Law Foundation in 2005. His books include *Family Security and Family Breakdown* (1971), *Family Law and Social Policy* (1978, 1984), *Regulating Divorce* (1991) and *Family Law and Personal Life* (2006, 2007).

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Brenda Hale is the first, and so far the only, woman Justice of the Supreme Court of the United Kingdom. She joined the top court in the country in 2004 when it was still a committee of the House of Lords, after a varied career as an academic, law reformer and judge. In all three capacities, her primary interest has been in Family and Social Welfare Law. In 1978, she was due to collaborate with Stephen Cretney in writing a book which he inspired (later published as *The Family, Law and Society – Cases and Materials*), when he had to withdraw because of his appointment as a Law Commissioner. When he left the Law Commission in 1984 to become a Professor at the University of Bristol, she replaced him as the Commissioner in charge of Family Law. And in 2007, as Chancellor of the University of Bristol, she was delighted to be able to honour his achievements in Family Law by conferring upon him the degree of Doctor of Laws, *honoris causa*.

Sonia Harris-Short is a graduate of Christ Church, Oxford (and was a family law student of Stephen Cretney's whilst an undergraduate) and has an LLM (by research) from the University of British Columbia, Canada. She currently holds the position of Professor in Family Law and Policy at Birmingham Law School, University of Birmingham where she is also the Director (Research) of the Centre for Professional Legal Education and Research. She is the author of a recent monograph examining aboriginal child welfare and self-government in Canada and Australia and the co-author (with J. Miles, University of Cambridge) of *Family Law: Text, Cases and Materials*, a major family law text for OUP. She has published extensively in leading journals on a range of family law issues including adoption, the interaction between family law and human rights, shared parenting and gender and the law. She also serves as a Deputy District Judge (Civil) on the Northern Circuit.

Joanna Harwood graduated from the University of Warwick in July 2010. It was at Warwick that she developed her interest in family law and when she first became aware of Stephen Cretney's immense contribution to this area of law. In the year following her graduation, Joanna worked as a volunteer for her local women's refuge and Citizens Advice Bureau. She also worked as a researcher for Rebecca Probert and as a seminar tutor at the University of Warwick, an experience which enabled her to study family law from the other side of the seminar desk. Joanna has delivered two papers at Soroptmist International study days held at the University of Warwick, both papers focusing on family law and domestic violence; these papers have recently been published in *Optimistic Objectives* and *Tackling Domestic Violence*. She is currently working as a research assistant at the Law Commission and hopes to return to Warwick in the future to do a PhD.

Jonathan Herring is Professor of Law and a Fellow of Law at Exeter College, University of Oxford, where Stephen Cretney was once a Fellow. Jonathan is the author of several textbooks including *Criminal Law: Text Cases and*

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Sue Jenkinson, formerly a businesswoman in property development, returned to education in 1995, and obtained her LLB, LLM and PhD from Staffordshire University where she is now a senior lecturer and Director of the Staffordshire University Centre for Family Law and Policy. Her teaching and research interests focus on divorce and its legal history, very much inspired by Stephen Cretney's work.

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Penny Lewis graduated from the University of Warwick in July 2010, having spent part of her final year working as a research assistant in both company law and family law. Since joining the Law Commission as a research assistant in September 2010 she has primarily been working in the area of socio-legal history and now in her second year she is assisting in the preparations for the Statute Law (Repeals) Bill for introduction into Parliament in 2012. Penny has written for the *Child and Family Law Quarterly* and has delivered a paper at the Waseda-Warwick Joint Seminar in Tokyo which examined human rights and criminal and family law in an international comparative context. She hopes to do a PhD in the future in the area of family law and literature and continues to take inspiration from the books and articles written by Stephen Cretney which have added colour and texture to the otherwise black letters of law.

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Simon Rowbotham was called to the bar on 28 July 2011 by the Honourable Society of the Middle Temple. He is undertaking his family law pupillage at Deans Court Chambers under the supervision of Bansa Singh Hayer and Francesca Fothergill. He studied Law at Hughes Hall, Cambridge, under the encouraging eye of his Director of Studies, John Hopkins, in the course of which he studied Family Law under the enthusiastic eye of Dr. Jens M. Scherpe and with the invaluable assistance of *Cretney's Principles of Family Law* (8th ed.). This chapter is his first work to be published.

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