

BOOK REVIEWS

FAMILY SECURITY AND FAMILY BREAKDOWN

by JOHN EEKELARR
(Penguin 1971, pp. 304, \$3.25)

FAMILY LAW

by MARGARET PUXON
(Penguin 1971, pp. 319, \$2.10)

The appearance of two new (or at least one new and one revised) works on family law in paperback in one month is quite a considerable event. Of the two, Mr. Eekelaar's new work, *Family Security and Family Breakdown* is immeasurably the more ambitious in that it sets out to break new and fundamental ground. First of all, the author considers how far the law comes to grips with the inherent difficulty of family living and promotes family stability. He then examines the attitude of the law to the defective family and, in particular, considers the ways in which the law assists, or fails to assist, its members. *Family Security and Family Breakdown* is, of course, intended primarily for the English market but this does not mean that it is of no value to the Australian student of family law. Until the publication of Hambly and Turner's casebook, the Australian student was deprived of any of the basic social and anthropological background necessary for a really valid study of family law. Hence the introductory section of this book ought to be compulsory reading, not only for teachers and students of family law, but for the necessarily isolated practitioner.

Mr. Eekelaar's book possesses many features which are especially meritorious. The section on 'Family Security' contains what is perhaps to date the most readily comprehensible account of the law relating to matrimonial property. No other aspect of the law as a whole demonstrates the failure of both judge and legislature to achieve a workable, reasonable and just system of law. Mr. Eekelaar points out, quite correctly in my view, that the confused state of the law does in the end possess a basic, albeit questionable, philosophy. The author compares the fundamentally *commercial* attitude of the English Courts towards the law of matrimonial property with solutions adopted elsewhere. He comes to the conclusion that the system of 'deferred community', which is operative in Scandinavian countries, is the least unsatisfactory. The essence of this system is that the spouse whose security is threatened by the misbehaviour or improvidence of the other may apply to the court to have half of the matrimonial property vested in him, thus placing it out of reach of the other's future creditors. Compared with many of the different solutions adopted elsewhere, this system seems to have much to commend it and deserves closer inquiry.

Family law is, by its very nature, a contentious subject and one of the most worthwhile features of *Family Security and Family Breakdown* is the way in which the author is able to present the continuing debate

on these issues in a dispassionate manner whilst at the same time advancing his own valuable views. In no part of the book can this be seen to better advantage than in his discussion of the problems surrounding the law of adoption. Mr. Eekelaar agrees with the view of the Houghton Committee that placement of children with non-relatives should only be arranged through specialist agencies. This attitude seems, in view of all the obvious difficulties involved, to be correct. He also makes the point, with which your reviewer also fully agrees, that although the disruption of a family through divorce has adverse effects on children, discord in the home caused by a barely subsisting marriage may be even more harmful. However, although the author comments that, in deciding custody disputes, the courts, '... have produced rather questionable assumptions about what is best for children', he does not suggest that such matters should be removed from the Courts. Although there can be no doubt that the judiciary tackle these almost impossible problems with considerable courage, it is unfair, in your reviewer's opinion, to require them to assume the attributes of an entirely different discipline.

It is unfortunate that nowhere does Mr. Eekelaar consider the divorce action itself. The apparently anachronistic criteria used for determining the award of costs has recently come under fire from the English Court of Appeal in *Gooday v. Gooday* [1969] P. 1, while the rather extreme view adopted in that case has been explained in *Povey v. Povey* [1971] 2 W.L.R. 381 by Sir Jocelyn Simon P. and Ormrod J. It would have been instructive to have seen Mr. Eekelaar's view on this contrary and emotive topic. *Family Security and Family Breakdown* is a valuable and fascinating work. It is a book which ought to provide a starting point for the kind of creative thought and development so important in the study of family law both here and in Britain.

It ought to be possible to write a readable, coherent and accurate introduction to family law but, if one is to judge from certain recent attempts, it is extraordinarily difficult. *Family Law* by Margaret Puxon is an enlarged and revised edition of her earlier book *The Family and the Law* and many of the same considerations are applicable to this second edition. Where both editions fail, it is suggested, is that the author has failed to clarify the aims of the book in her own mind. At present, *Family Law* is neither a cohesive statement of the English law, nor can it claim to compete with Mr. Eekelaar's commentary on the social background and condition of the law. Furthermore Mrs. Puxon's prose style has elements of which Barbara Cartland would be proud. (Note particularly her introductory considerations of the law of cruelty on p. 156). In writing a relatively short text of this nature, it is obvious that it is impossible to include detailed considerations of each problem, yet that cannot of itself excuse a failure to get to grips with immediate problems presented by the case law. For example in her discussion of the standard of proof required in cases of adultery, the author succeeds in avoiding every problem presented by that most complex and difficult of cases, *Blyth v. Blyth* [1966] 1 A.C. 643, and avoids those presented

by the later case of *Bastable v. Bastable & Sanders* [1968] 3 All E.R. 701 by simply not referring to it at all. Unlike Mr. Eekelaar, Mrs. Puxon does consider the question of costs but refers to the cases of *Nowotnik v. Nowotnik* [1965] 3 W.L.R. 920, *Hanning v. Maitland* [1970] 1 Q.B. 586 and *Gooday v. Gooday (ante)* only in relation to legal aid. She also makes an eloquent though unconvincing statement that divorce costs are not as high as is generally reckoned and adds the remarkable comment that, '... no one can be required to pay exorbitant costs unless he himself agrees at the outset that no expense shall be spared'. Having said all this, and bearing in mind that the examples quoted could be multiplied considerably, *Family Law* is probably the best book of this kind yet written. This is neither a compliment to it, nor to its competitors on both sides of the globe.

Frank Bates

