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Book Reviews

Law in Society: Reflections on Children, Family, Culture and Philosophy

Alison Diduck, Noam Peleg and Helen Reece, Nijhoff: Brill, 2015. 678 pp. ISBN: 978-9004261488 £198.00

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Opening this collection from the 2013 colloquium: 'The law and Michael Freeman', the editors pose a question: 'What… links cricket, fairy tales, children's views on education, barristers' views on relocation and family law' across several jurisdictions? The 'answer, of course, is Michael Freeman' (p. 1). This rich and engaging collection demonstrates how the work of one prolific and pioneering individual can provide an exciting and energetic focus for revisiting law's relationship to culture, rights, coercive state practices, intimate family life, and studies of family law and children's rights across jurisdictions. Michael Freeman's scholarship works in different ways across the book. Sometimes, it provides a jumping-off point or stimulus for the author's own work; sometimes it provides texts for re-reading; and sometimes it provides the basis for reflecting on change – revisiting older texts from the vantage point of the present.

I was pleased to be asked to review this collection. I have known Michael Freeman since I started my undergraduate law degree at UCL in 1985, staying in touch and occasionally meeting in the years that followed. A very charismatic, popular, enthusiastic teacher, Michael's personal qualities filtered through the book's different essays, rather than getting lost in academic scholarship, as contributors spoke of his kindness, breadth of interest and sense of ironic (sometimes mischievous) fun, which I was glad about. Carrie Menkel-Meadow, whose affectionate essay closes the book, in particular, provides a personal reflection on Michael as a colleague, scholar and friend. Generous and erudite, hard-working and energetic, wonderful as a (often self-satirising) story-teller, warm and affectionate – these are words I have often heard used about Michael over the years, and qualities that emerge in this book also. But what jumps out even more keenly from this volume is the extent to which Michael has been a pioneer – combining scholarship, legal analysis and political commitment for more than forty years in cutting-edge work on domestic violence, custody and children's rights. As Helen Reece remarks, 'Michael does deserve credit for [helping to bring]… the Women's Liberation Movement explanation [of domestic violence] into the legal academy' (p. 310).

Still, reviewing this kind of book is a challenge. There are readers who know Michael Freeman, and know his work, who will enjoy revisiting some of his older writing, as well as appreciating the contemporary scholarship his work and lines of argument have stimulated. But there are other readers who will not know Michael personally and may not know his work well. This collection of essays, while written in his honour and engaged with his work, also, I think it is important to say, has an independent value in terms of the scholarship it presents.

Contributions cover a great deal of terrain, but the topic around which many of them cluster is the rights and status of children, and the responsibilities of others towards them. There are essays on the best approach (welfare vs. duty) to decisions affecting children (Ferguson), and on the need for legal academics to become multilingual, adopting the discursive registers of other disciplines in order to encourage urban planners, educationalists, economists and others to recognise the value of children's rights (Tobin). There are essays on the legal disputes generated by parental separation and divorce (Kaganas and Piper), including in relation to the relocation of children (Lanteigne); on what the UN Convention on the Rights of the Child would look like if children were involved in drafting it (Lundy *et al.*); on corporal punishment (Saunders), and how young children can be held responsible for crimes while not being held old enough to make decisions (Keating); on children's right to good quality state care for those who need it (Masson); on medical decisions relating to children with severe disabilities (Bridgeman); and on the commercially exploitative

reach of corporations into children's lives (McGillivray). Across the many fine essays of this book, too many to mention and do justice to here, two fault-lines repeatedly recur: children's well-being and freedom vs. parental autonomy and control; and state intervention vs. familial independence. Drawing on normative theory, legal doctrine, social justice scholarship and public policy, the essays explore how the balance of decision-making authority is struck and how it should be struck. At the same time, many refuse a crude liberal division into competing rights as they explore how well-being and empowerment depend on the exercise of care and responsibility by others. Written by well-known as well as newer scholars, these essays offer much to interest readers concerned with contemporary legal and policy debates over the regulation of intergenerational relations of intimacy, care and responsibility.

But the essays in this volume are also interesting in another key respect. Criss-crossing the work of a scholar prolific for more than four decades, they provide an entry point for reflecting, more generally, on a body of academic work. In an era when 'impact' has become increasingly prominent currency, this volume points to more subtle questions about the changing traces that scholarly work generates over time. This is not a matter of simply academic 'shelf-life', but how the meaning and effects of scholarship, including politically committed scholarship, evolve as the conditions against which they are read change. These shifts surface in Helen Reece's close analysis of Michael's trajectory of work on domestic violence and in Judith Masson's essay on residential care. They also surface in Robert Reiner's discussion of a paper by Michael Freeman on 'law and order in 1984'. Reiner describes the paper as 'a state-of-the-art representation of liberal and left thinking about law and order … a momento of a by-gone age of comparative innocence' (p. 273). At the same time, it is also an account whose revisiting reminds us how much expectations about surveillance and policing practice have changed, and how turns to the right that once seemed temporary aberrations can endure, intensify and become 'normal'.

In his essay, Reiner remarks that 'Michael Freeman isn't a contender to be Mystic Michael' (p. 273); at the same time, several contributors refer to Michael's prescience in identifying issues, lines of analysis and policy proposals that, while radical when first raised, have since become mainstream. What the essays also reveal is how progressive arguments made in one era may no longer fit as conditions change. For instance, Judith Masson suggests Michael's argument for children's right *not* to be placed in care now needs to be supplemented by arguments for good care for those who need it. Likewise, Felicity Kaganas and Christine Piper, in their discussion of post-divorce custody negotiations, suggest that, while Michael 'thought that mediation should be encouraged… it is most unlikely that he could have envisaged the withdrawal of legal aid and the move to exclude disputes about children from the legal arena. He could not have predicted that there would be a drive to replace adjudication with mediation' (p. 387–88). These and other contributions resonate with the ethos that Michael Freeman's work demonstrates – of unwavering value commitments combined with a level of policy pragmatism. Focusing on viable principles chimes with Roger Cotterrell's account of jurisprudence as 'an enterprise distinct from legal philosophy' (p. 16), 'concerned with the idea (and ideal) of law as a practice of regulation to serve social needs and social values' (p. 23). It also is evident in Michael Freeman's use of analogy. Contributors discuss how Michael's often provocative analogies denaturalised taken-for-granted norms and assumptions, rendering more radically aspirational reforms familiar and sensible. Bernadette Saunders, for instance, describes how Michael uses modern opprobrium at chastisement towards women as a way of getting people to think again about physical punishment of children (p. 247). Analogies like these can be problematic, particularly when empathy towards one constituency is claimed or appropriated for the benefit of another. But Michael's use of analogy is more akin to the associative use of metaphors that Sarah Lamble (2011, chapter 7) describes, in which analogies are used to build connections. Michael's work on adult women and children demonstrates a long-standing concern with the injustice and subordination both have faced, the role law may play in sanctioning it and law's capacity to contribute to its undoing.

What emerges from contributors' discussion of Michael's work and the legal topics he has spent a career addressing is a 'prosaic' approach to law, evocative of Joe Painter's (2006) work on the 'prosaic' state. Painter uses this phrase as a way of being attentive to what is deemed small-scale and ordinary, to the presence of multiple voices, to conflict and disorder. A prosaic approach rejects the notion of the state as a distinct separate sphere apart from civil society, finding the state instead to be present in everyday life. It avoids treating the state as unified, and concerns itself with the 'heterogeneous, constructed, porous, uneven, processual and

relational character' (p. 754) of state practices, whose outcomes are uncertain, unfinished and imperfect. A similar depiction of law surfaces in this book – of law as a regulatory set of tools saturated by their context, used by different forces and apparatuses, to support different agenda, sometimes effective and sometimes yielding unexpected outcomes. From this perspective, law is worth progressive forces engaging with, and attempting to craft, not because it is deific, but because it is part of what is there.

References

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Balancing Constitutional Rights: The Origins and Meanings of Postwar Legal Discourse*

By Jacco Bomhoff, Cambridge, Cambridge University Press, 2013. 290 pp. ISBN: 9781107044418 £24.00

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Jacco Bomhoff's book, *Balancing Constitutional Rights*, is a very impressive achievement. It is probably the most authoritative and extensive review of the history of balancing in the US and in Europe to date. Not many scholars can show a mastery of the literature on the subject in three languages (English, French and German) and throughout a period of more than a century. Moreover, Bomhoff has succeeded in an undertaking that comparativists and historians seldom succeed in executing – producing an intimate and nuanced examination of more than one legal system, and over more than one period.

The book canvases the development of the concept of balancing in the US and in Europe – mostly Germany – concentrating on two periods: the late nineteenth and early twentieth centuries, and the 1950s to 1960s. In addition, it provides important meta observations on the nature of balancing and the significance of the comparative differences.

At the centre of the book is the claim that balancing did not have the same meaning in America and in Germany. This general observation is translated into many sophisticated and complex sub-observations regarding the differences between balancing in the US and in Germany, the particular historical and intellectual context in which they were set and the way different legal actors have shaped these meanings. Any attempt to distil one central argument out of this complex analysis would be a simplification; however, if one tries to do so anyway, the following statement would epitomise it: balancing for Germany represents the belief in law and in legal formality while in the US it represents the breakdown of the belief in law and in legal formality. In making this argument, the book dispels a common misconception about balancing – namely that it is always about informality in law. The author believes it to be an American misconception, based on the American experience, and argues that it fails to understand the German legal mentality in which the relationship between the formal and the substantive is much more complex than in America. Balancing, argues Bomhoff, represents in Germany both the formal and the substantive aspect of law at the same time.

The book is densely written and it is not always an easy read, but it is definitely worth the effort, and offers some beautiful prose and a truly passionate style that does not leave the reader indifferent. It is a goldmine of quotations and information, especially for the English-speaking reader who is interested in the European experience of the time. Most importantly, in many crucial points, I find the book to be persuasive and to provide a good phenomenological account of the differences between American and German balancing.

However, I will take issue with several important aspects of the book, without detracting from its importance. In particular, I will argue that the book has at times a jurisprudential emphasis approach that leaves unanswered important socio-political aspects of the phenomena it describes. In addition, it tends to

* There was an error in the title that has now been corrected. An erratum notice has been published providing details.