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**THE “FAMILY”—AND
“FAMILIES” IN LAW:
A REVIEW OF ARCHANA PARASHAR
AND FRANCESCA DOMINELLO,
*THE FAMILY IN LAW***

Mary Jane Mossman*

Once upon a time, things were easy for family lawyers. Their object of study was clearly marked out (marriage, divorce, and their consequences), while theoretical debate about the subject was rare or non-existent. Although it is difficult to locate this Garden of Eden in real time, most family lawyers would share the perception that things have become more complex of late. . . . [And] allied to this, there has been an explosion of theoretical interest in law and the family.¹

Two decades after this assessment by John Dewar, *The Family in Law* offers a significant and sophisticated appraisal of the law’s engagement “in the construction of ideas about the family and familial relationships”.² The authors’ basic premise is that legal analysis continues to utilize a limited conception of “the family”, one that

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¹ John Dewar, “Family, Law and Theory” (1996) 16:4 Oxf J Leg Stud 725 at 725. See also David Morgan, *Family Connections: An Introduction to Family Studies* (Cambridge: Polity Press, 1996).

² Archana Parashar & Francesca Dominello, *The Family in Law* (Cambridge: Cambridge University Press, 2017) at 2.

emphasizes the nuclear family as the norm, thereby contributing to an assumption that “family” is primarily “a private institution whose main function is to provide economic and emotional support” for its members. More specifically, the authors suggest that lawyers, judges and legal academics all tend to engage in legal reasoning that, subtly or otherwise, reifies “the nuclear family” as the normative ideal, even in the context of clear evidence of many different family forms.³ Thus, the authors’ goal is to critique how “family law functions in ways that preserve the nuclear family and continue to perpetuate heterosexual normativity, cultural bias, age, sex, class hierarchies, and the sexual division of labour within and outside the family.”⁴ In doing so, moreover, the authors attempt to “challenge the conventional boundaries of family law” in legal textbooks to reveal how “the law [especially in the courts] makes explicit choices in regulating family life.”⁵ Thus, their analysis suggests that “family law constructs discourses about families in a way that *hierarchies found in contemporary society are maintained rather than challenged*.”⁶

Although *The Family in Law* focuses on “family law” in Australia, it offers a thoughtful analysis for lawyers, judges and legal academics in Canada as well, since many of the same challenges are evident in both jurisdictions. For example, Bill C-78 was introduced by Canada’s Minister of Justice in the House of Commons on

³ *Ibid* at 2–3.

⁴ *Ibid* at 3.

⁵ *Ibid*.

⁶ *Ibid* at 4 [emphasis added].

22 May 2018, with a number of significant proposals to amend the substance and process of divorces (and including additional amendments to other federal statutes as well). For example, Bill C-78 includes proposals to replace the terminology of custody and access with terminology related to parenting; establish a non-exhaustive list of criteria for determining “the best interest of the child;” create duties for parties and legal advisors to encourage the use of family dispute resolution processes; introduce measures to assist courts to address family violence; establish a framework regarding the relocation of a child; and simplify processes such as those related to family support obligations.⁷

In the context of proposed reforms in Canada, it seems significant that the federal government in Australia had also announced a comprehensive review of Australia’s *Family Law Act*⁸ in September 2017, to be undertaken by the Australian Law Reform Commission. The Review’s terms of reference recognized the “profound social changes to the needs of families” since the 1970s (when the Australian *Family Law Act* was first enacted), including the greater diversity of family structures, the importance of ensuring that the *FLA* meets the needs of contemporary families and individuals, and the importance of public

⁷ Bill C-78, *An Act to amend the Divorce Act, the Family Orders and Agreements Enforcement Assistance Act and the Garnishment, Attachment and Pension Diversion Act and to make consequential amendments to another Act*, 1st Sess, 42nd Parl, 2018, Explanatory Notes (first reading 22 May 2018).

⁸ *Family Law Act 1975* (Cth), 1975/53 [FLA].

confidence in the family law system.⁹ More specifically, the terms of reference directed an exploration of some of the same issues included in Bill C-78 in Canada: for example, the importance of dignity and privacy for separating families, the need to encourage dispute resolution early, the importance of protecting children of separating families, the pressures (including financial pressures) on family law courts, and the benefits of engaging appropriately skilled professionals. In assessing appropriate reforms, moreover, the Review will consider “the appropriate, early and cost-effective resolution of all family law disputes;” “whether the adversarial court system offers the best way to support the safety of families and resolve matters;” and the possibility of devising opportunities for less adversarial resolution of parenting and property disputes.¹⁰ Thus, in both the Australian and Canadian contexts, significant reform proposals concerning families and law are currently underway. Although some aspects of these reforms focus on substantive issues, it appears that process concerns may be paramount in both jurisdictions: the search for cheaper, faster settlements that do not require courts and judges.

By contrast, a primary critique for the authors of *The Family in Law* is the need to recognize that family law should not be understood as merely a dispute resolution

mechanism for private parties. In posing these challenges for family law, moreover, the authors explore whether the concept of justice, which traditionally operates in the “public” sphere, should be extended to the “private” sphere of the family. They conclude that this issue requires attentiveness not only to goals of gender equality but also to the needs of the many families that do not conform to the nuclear family model.¹¹ In addition, the authors note the irony that family law supports an ideology of love, altruism, and personal fulfilment when a family relationship is formed and while it continues; however, “at the end of the very same relationship it adopts another stand—that family law is no more than a dispute resolution mechanism. . . . It does not wish to know anything about messy emotions, sacrifices or altruism.”¹² In this way, family law manages to appear to be value-neutral:

ADR is often presented to consumers as cheaper, more time efficient and providing better access to justice in contrast to litigation, but even if these claims are true the issue for us as legal thinkers is how conducive it is to achieving a fair family law. . . . [While the *Family Law Act* promotes autonomy and privacy, reinforcing the family as a private institution,] ADR reproduces a range of social hierarchies that come together

⁹ Attorney-General for Australia, News Release, “First Comprehensive Review of the Family Law Act” (27 September 2017), online: *Media Releases* <www.pandora.nla.gov.au/pan/21248/20171101-0244/www.attorneygeneral.gov.au/Mediareleases/Pages/2017/ThirdQuarter/First-comprehensive-review-of-the-family-law-act-27-September-2017.html>.

¹⁰ *Ibid.*

¹¹ *The Family in Law*, *supra* note 2 at 21–25, citing Susan Moller Okin, *Justice, Gender and the Family* (New York: Basic Books, 1989); Will Kymlicka, “Rethinking the Family” (1991) 20:1 *Philos Public Aff* 77.

¹² *The Family in Law*, *supra* note 2 at 27, citing Carol Smart, *The Ties that Bind: Law, Marriage, and the Reproduction of Patriarchal Relations* (London: Routledge & Kegan Paul, 1984).

and function to legitimise gender hierarchies that exist in the nuclear family form [as well as hierarchies of class, race and sexuality that exist in society].¹³

Thus, applying their argument that legal knowledge is inevitably *constructed*, the authors explain how theory is essential to the creation of a just family law; that is, lawyers, judges, and academics must always “make choices about the categories of analysis,” and the issues and the way to analyse them: for example, whether to promote gender justice goals in family disputes, as opposed to merely improving the cost and time efficiency of the family law system. In this way, they conclude that “responsibility for our ideas lies with us.”¹⁴

[A]ny analysis of family law needs to address the question of whether reform to the substantive law has the potential to transcend the inequities that exist between men, women and children, and for people of different sexualities, cultures and socioeconomic backgrounds in contemporary social

¹³ *The Family in Law*, *supra* note 2 at 60. See also Rosemary Hunter, “Adversarial Mythologies: Policy Assumptions and Research Evidence in Family Law” (2003) 30:1 JL & Soc’y 156.

¹⁴ *The Family in Law*, *supra* note 2 at 29–30. The authors engage with ideas in Michel Foucault, *Power/Knowledge: Selected Interviews and Other Writings 1972-77*, translated by Colin Gordon et al (New York: Pantheon Books, 1980) to explore the need to embrace theory in family law. See also David Sugarman, “Legal Theory, the Common Law Mind and the Making of the Textbook Tradition” in William Twining, ed, *Legal Theory and Common Law* (New York: Basil Blackwell, 1986) at 26.

arrangements. . . . [A] study of family law provides a good opportunity to illustrate the relationships between the law, society and the state, and insight on how family law could be different.¹⁵

In critiquing the law’s positivist account of its rules as objective and value-free, the authors engage with interdisciplinary scholarship to explore three fundamental themes: the diversity of family forms, the sexual division of labour, and the public/private divide. In the authors’ view, family law should not be understood as merely a dispute resolution mechanism for private parties.¹⁶

The Family in Law offers a comprehensive overview of contemporary issues about “family law” in Australia. The authors are scrupulous in providing details of statutes and cases relating to marriage (and marriage-like relationships), divorce, financial relations, spousal maintenance, private ordering of financial relations (family contracts), disputes about children, children’s roles in court proceedings; child maintenance and support (including social security); regulation of families (abortion and child protection); and adoption and reproductive technologies. Yet, at the same time, their exploration of these issues

¹⁵ *The Family in Law*, *supra* note 2 at 11.

¹⁶ The book’s second chapter focuses on family law institutions, including the Family Court of Australia, which has jurisdiction in all the states and territories as a result of the assignment of family law matters to the federal government pursuant to *Commonwealth of Australia Constitution Act 1900* (Imp), 1900, s 51. Issues about child protection and family violence, however, are part of the jurisdiction of states and territories.

includes rigorous attentiveness to underlying policy issues, which are assessed in terms of wide-ranging legal and interdisciplinary scholarship and engaged critique—especially in relation to the themes identified earlier: the law’s narrow focus on the nuclear family, the inequities of the sexual division of labour, and the need to reconsider the public/private spheres in the family law context. Overall, the book provides a detailed and engaged assessment of contemporary issues about the family in law, especially in relation to fundamental theories about the role of law in society and the need to incorporate interdisciplinary scholarship to achieve better outcomes in law. In this way, the book offers solid and persuasive arguments that create new ways of understanding the problems and potential of law for families in the twenty-first century.

For Canadian lawyers, judges, and academics and their students, three subjects appear particularly relevant. One is the extent to which the authors explore challenges of diversity in families, focusing particularly on race and sexuality. In relation to marriage, for example, the book focuses on the limited recognition of Aboriginal customary marriages, and how embedded assumptions about marriage as monogamous resulted in a recommendation by the Australian Law Reform Commission for only limited recognition of customary marriages (some of which are polygamous). The authors challenge this limitation, concluding that “treating [the concept of monogamous marriage] as unchangeable in the process of ‘recognising’ another familial arrangement, should be seen as an exercise

of power rather than a mere description of a natural state of affairs.”¹⁷

Similarly, the authors critique the High Court’s decision in 2013 in *Commonwealth v. Australian Capital Territory* concerning same-sex marriage.¹⁸ Although the federal *Marriage Act* included recognition of only opposite-sex marriages, the High Court concluded that this federal statute nonetheless “covered the field”, so that a statute enacted by the Australian Capital Territory (ACT) to permit same-sex marriages in its Territory was ultra vires—in spite of intransigence on the part of the federal Parliament to amend the *Marriage Act* to achieve greater inclusivity. The authors argued that the omission of same-sex marriage in the federal *Act* could have permitted the High Court to acknowledge a “gap”, (that is, that the federal *Act* did not cover the field), thereby validating the ACT statute. Moreover, as they noted, the High Court’s decision failed to mention that the same-sex marriages, which had been performed pursuant to the ACT statute, were rendered void by its decision, thus resulting in

¹⁷ *The Family in Law*, supra note 2 at 47–49. The book also includes extensive discussion about child custody determinations involving Aboriginal children in Chapter 9, especially the Australia, Human Rights and Equal Opportunity Commission, *Bringing Them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander children from their Families* (1997), online <www.humanrights.gov.au/publications/bringing-them-home-report-1997>. In addition, there is discussion in Chapter 11 about child welfare and Aboriginal children, including the over-representation of Aboriginal and Torres Strait Islander children in care, at 399–404. Many of these issues resonate with similar challenges in Canada.

¹⁸ *Commonwealth v Australian Capital Territory*, [2013] HCA 55, 250 CLR 441.

discrimination on the basis of sexuality.¹⁹ In all of these cases, of course, the authors emphasized how legal approaches to the (lack of full) recognition of “other” family forms reinforces the primacy of the nuclear family in law. Moreover, while same-sex marriage was eventually recognized by Canada’s federal Parliament in 2005, and customary Aboriginal marriages have achieved recognition for some purposes in Canadian provinces, the patchwork of legal rights and responsibilities for transgender persons and cohabiting adults in “family” relationships continue to create challenges for some Canadian families.²⁰

A second way in which this book opens up new ways of thinking about family law matters is in its treatment of child support issues, and particularly the need to take into account broader societal arrangements, that is, by extending the boundaries of “family law”. Chapter 10 focuses on the how federal statutes concerning child

support obligations and their administrative arrangements reflect how “the discourse of neoliberalism has translated into the context of private responsibility for the child”; as well, the authors critique how child support provisions “normalise the idea of the nuclear family as the ideal form of family, but in a way that promotes parenting as a gender-neutral activity, which fails to account for the reality of the effects of the sexual division of labour.”²¹ Of course, these critiques about child support arrangements (and their inevitable links to needed spousal maintenance)²² have also been voiced in Canada.²³ What is particularly significant for this book, however, is its effort to assess these “private” family support obligations in the larger context of the “public” social security system in Australia. According to the authors, there is an “urgent need to refocus the issue on the *social responsibility* for child support rather than making it a (private) primary responsibility of the poorest mothers and fathers in our society.”²⁴

The book includes analysis of governmental inquiries and reform processes that resulted in the current

¹⁹ *The Family in Law*, *supra* note 2 at 49–51. The authors also argue that an expanded definition of “marriage” in federal legislation could also include “de facto” (cohabiting) relationships at 51–52.

²⁰ In relation to same-sex marriage, see *Civil Marriage Act*, SC 2005, c 33 and Mark D Walters, “Incorporating Common Law into the Constitution of Canada: *Egale v Canada* and the Status of Marriage” (2005) 41:1 Osgoode Hall LJ 75. In relation to Aboriginal customary marriages, see Bradford Morse, “Indian and Inuit Family Law and the Canadian Legal System” (1980) 8:2 *Am Indian L Rev* 199. Ontario enacted the *Right to be Free from Discrimination and Harassment Because of Gender Identity or Gender Expression*, 2012, SO 2012, c 7; and gender identity is included as a protected ground of discrimination in Manitoba, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Saskatchewan and the Northwest Territories. However, the law affecting cohabitants differs across Canada: see Robert Leckey, “Cohabitation and Comparative Method” (2009) 72:1 *Mod L Rev* 48.

²¹ *The Family in Law*, *supra* note 2 at 334.

²² *Ibid.* See also Margaret Harrison, “Continuous Parenting and the Clean Break: The Aftermath of Marriage Breakdown” (1988) 23:3 *Austl J Social Issues* 208; Regina Graycar, “Towards a Feminist Position of Maintenance” (1987) *Refractory Girl: A Women’s Studies Journal* 7; and Margrit Eichler, “The Limits of Family Law Reform” (1990) 7 *Can Fam LQ* 59.

²³ Susan B Boyd, *Child Custody, Law and Women’s Work* (Don Mills, Ont: Oxford University Press, 2003).

²⁴ *The Family in Law*, *supra* note 2 at 354. See also Mary Jane Mossman, “Running Hard to Stand Still: The Paradox of Family Law Reform” (1994) 17:1 *Dalhousie LJ* 5.

arrangements for child support, focusing particularly on the invocation of the “shared parenting” principle for which there was scant evidence in family “practices”.²⁵ Indeed, there are also arguments that suggest that the stated goals of child support reforms (reducing child poverty and reducing the cost to the state for children following their parents’ separation) have not been met.²⁶ In addition, the authors suggest that the needs of lone mothers are completely unrecognized because of law’s preference for the nuclear family:

The ‘clean break’ philosophy in family law is that the parties should fend for themselves after relationship breakdown. If that is not possible, the law provides for ongoing maintenance. The idea is to contain the cost of relationship breakdown between the parties. This approach treats social welfare as a last resort measure. [However,] social-welfare provisions also play a significant role

²⁵ See Helen Rhoades & Susan Boyd, “Reforming Custody Laws: A Comparative Study” (2004) 18:2 Int’l JL Pol’y & Fam 119; Rhoades, “Posing as Reform: The Case of the Family Law Reform Act” (2000) 14:2 Austl J Fam L 142; Kay Cook & Kristin Natalier, “Selective Hearing: The Gendered Construction and Reception of Inquiry Evidence” (2014) 34:4 Crit Soc Pol’y 515. The authors also reference a comparative study, which highlighted how Australia’s formal equal opportunity policy in education and employment was not replicated in families with children where traditional gender roles were reinforced: Lyn Craig & Killian Mullan, “Parenthood, Gender and Work-Family Time in the United States, Australia, Italy, France and Denmark” (2010) 72:5 J Marriage Fam 1344.

²⁶ See Belinda Fehlberg et al, *Australian Family Law: The Contemporary Context*, 2nd ed (Oxford: Oxford University Press, 2015) at 424–25.

in legitimising gender inequalities, while also entrenching other social hierarchies of class and race.²⁷

Perhaps because of the different constitutional arrangements in Canada, where financial provision for spouses and children at family breakdown—as well as employment insurance and social welfare—are sometimes shared/sometimes exclusive responsibilities of either the federal and provincial governments, Canadian family law most often does not extend its boundaries to detailed examination of relationships between “private” family support and “public” entitlements to social security—even though these relationships are often critical concerns for alleviating financial dependency in families.²⁸ In this way, the focus on relationships between “family” support and “societal” support in *The Family in Law* points to an

²⁷ *The Family in Law*, *supra* note 2 at 363. The authors explain how neoliberal ideology suggests that cutting welfare costs will generate economic growth and employment, and that the New Right has often been embraced by fathers’ rights groups. For many in these groups, the goal is that “women should be forced to be financially reliant on men,” and this reliance should be linked to the traditional family unit: *ibid* at 364–65. See also Miranda Kaye & Julie Tolmie, “Fathers’ Rights Groups in Australia and their Engagement with Issues in Family Law” (1998) 12:1 Austl J Fam L 19.

²⁸ For examples, see Mary Jane Mossman, “Conversations about Families in Canadian Courts and Legislatures: Are there ‘Lessons’ for the United States?” (2003) 32:1 Hofstra L Rev 171; Mossman, “Child Support or Support for Children? Re-Thinking the ‘Public’ and ‘Private’ in Family Law” (1997) 46 UNBLJ 63; and Mossman, “Family Law and Social Assistance: Rethinking Equality” (with Morag MacLean) in Patricia Evans & Gerda Wekerle, eds, *Women and the Canadian Welfare State* (Toronto: University of Toronto Press, 1997) 117.

economic reality that deserves much more attention in both Canada and Australia.

A third aspect of this book of some significance to Canada is Chapter 5, which focuses on property relations at family breakdown. As the authors suggest at the outset, the “most significant legal reform in the family laws of western states has been the granting of a share of property to the financially dependent spouse, usually the wife.”²⁹ At the same time, the authors argue that there is a “disjuncture between the law’s discourse on marriage as a partnership and the unequal gendered financial consequences of [family] breakdown”; according to the authors, this disjunction occurs because of “the concepts of nuclear family, family as a private institution, and the claims of family law as merely intended to provide a neutral dispute resolution mechanism.”³⁰ Subsection 79(2) of the *Family Law Act* in Australia requires a court to adjust title to spouses’ property interests only if it is “just and equitable” to do so. In assessing this requirement, the statute includes criteria, particularly focused on the spouses’ respective “contributions” and “needs”. This approach is similar to the property sharing provisions of some provinces in Canada, although most provincial statutes in Canada create a principle of “equal sharing” that establishes a baseline for

²⁹ *The Family in Law*, *supra* note 2 at 151. Although Australia’s *Family Law Act* initially provided for property sharing for married couples only, the same regime was extended to eligible “de facto” (cohabiting) couples in 2008: see *Family Law Amendment (De Facto Financial Matters and Other Measures) Act 2008* (Cth), 2008/115.

³⁰ *The Family in Law*, *supra* note 2 at 151.

the exercise of judicial discretion.³¹ By contrast, no such statutory guidance exists in Australia’s legislation, and an early precedent established that the concept of equal shares was not the “starting point” in the exercise of judicial discretion there.³² In this context, the authors suggest that the cases reflect how “judicial authority to alter individual interests in property is a radical departure from the approach to property acquisition and entitlement found in property law more generally [because] a central tenet of capitalist liberal societies is that property has economic or money value and those who can pay for it, own it.”³³

In this context, Australian courts seem to have considered business activities as more valuable than non-financial caregiving work and have tended to allocate property interests accordingly. In *In the Marriage of Ferraro*, for example, a trial judge divided significant family wealth so that the husband (who had experienced considerable success in business) received 70% and the wife (who had cared for the home and children) received

³¹ See e.g. *Family Law Act*, SBC 2011, c 25. Subsection 81(a) provides that both partners are entitled to property and responsible for debts and (b) creates an undivided half interest in all property as tenants in common at separation. Section 85 provides for excluding some property, such as pre-marriage property, inheritances, and gifts. Section 65 permits a court to reallocate property interests in accordance with “fairness,” and subsection 95(2) provides a list of factors to be considered in relation to an “unequal division”; the test is “significant unfairness.”

³² *Mallet v Mallet*, [1984] HCA 21, 156 CLR 605.

³³ *The Family in Law*, *supra* note 2 at 158–59. The authors indicate that the omission of any justification in the *Family Law Act* for this “radical departure” has created dissatisfaction for both men and women at separation: *ibid* at 159.

30%; the judge expressly rejected the wife's claim for an equal share, stating that an allocation of equal shares in this case would be:

. . . akin to treating the contributions of the creator of Sissinghurst Gardens, whose breadth of vision and imagination, talent, drive and endeavours led to the creation of . . . most beautiful gardens in England, with that of the gardener who assisted with the tilling of the soil and the weeding of the beds.³⁴

By contrast, Canadian statutes tend to require equal sharing of property as the starting point, although judicial discretion may still result in unequal shares.³⁵ For the authors of *The Family in Law*, it is this reliance on judicial discretion to achieve "just and equitable" outcomes that represents a major flaw in Australia's current statutory

³⁴ *In the Marriage Of: Renata Ferraro Appellant/Wife and Ruggero Ferraro Respondent/Husband*, [1992] FamCA 64 at para 139, 16 Fam LR 1 at 28. The appeal court altered the wife's share to 37.5%, while confirming the decision in *Mallet* that there was no presumption of equality as a starting point: *The Family in Law*, *supra* note 2 at 171.

³⁵ See e.g. *Martin v Martin* (1992), 67 BCLR (2d) 219, 1992 CarswellBC 137 (WL Can) (BCCA), decided pursuant to earlier legislation in British Columbia. Some provinces, such as Ontario, have statutes based on "equalization of values" of property, with a compensating money payment to the spouse whose net family property is the lesser in value. In this context, litigation often focuses on whether property can be "excluded" from the calculation: see e.g. *Caratun v Caratun* (1992), 42 RFL (3d) 113, 1992 CarswellOnt 287 (WL Can), where the Ontario Court of Appeal excluded the value of the husband's dental degree because it was not traditional property and its valuation for purposes of equalization would be "unfairly speculative".

regime. However, after considering whether different statutory guidelines might create better outcomes, the authors conclude that the fundamental problem is *the conception of the family as a private unit*, thus requiring the full cost of relationship breakdown to be borne by the spouses. As they suggest, "this assumption sits uneasily with the reality of dependencies created through the sexual division of labour, and it also absolves the state from establishing a safety net that sufficiently provides for the financially vulnerable party."³⁶ Clearly, these conclusions may be equally apt in Canada, even where there are statutory guidelines and a starting point of "equal shares", perhaps especially for the poorest and most vulnerable families. For the authors, fundamental reform of family property requires acknowledgement of societal structures that work to create dependencies:

[T]he study of family law has to be combined with study of other laws and disciplines so that the institutions that continue to view the worker as an unencumbered individual, with no caretaking responsibilities, can be changed. . . . [A] conception of a fair family law may require that policy-makers address the causes and consequences of the diminished earning capacity of caregivers, rather than only devising property ownership regimes.³⁷

³⁶ *The Family in Law*, *supra* note 2 at 177.

³⁷ *Ibid* at 189.

The Family in Law represents a formidable accomplishment in its comprehensive and knowledgeable assessment of the need for *fundamental* reform of law's role in relation to a wide range of issues for families in Australia. The book provides extensive references to legal and interdisciplinary commentary on family law principles and processes, along with an engaged and critical assessment of the need to reform Australian statutes and judicial approaches in cases. Although the book's organization presents its discussion in three parts (Chapters 1–2 focus on theoretical ideas about law and the family and family law institutions; Chapters 3–10 focus on marriage, divorce, and corollary matters; while Chapters 11–12 focus on abortion, child protection, adoption, and reproductive technologies), the organization appears to replicate a primary emphasis on issues relating to marriage and divorce. To some extent, this emphasis is inevitable in the context of the current law, of course—and the authors' focus on child support in the wider context of social security offers an often under-analyzed approach to economic security.

At the same time, the authors might find it interesting to explore the arrangement of one of Canada's family law books for students: its title is *Families and the Law* (not *Family Law*). Its content reflects the diversity of families and the crucial relationship between "private" ordering and "public" policy, especially in relation to race, class and gender, and economic security; and its organization traces the law's relationship to families in three sequential developments:

1. the creation of families (including marriage and cohabitation, but also parenting in relation to biological birth, adoption and reproductive technology);
2. the regulation by law of ongoing (intact) families (including child care arrangements, child protection, family violence, and elder abuse); and
3. the dissolution of families (divorce, agreements, dispute resolution, property, and spousal and child support).³⁸

As these comments suggest, *The Family in Law* creates an excellent opportunity for conversations about families and law among lawyers, judges, and legal academics in Australia and Canada. Although these conversations have often occurred in the past, the existence of the review by the Australian Law Reform Commission and the introduction of reform of Canada's *Divorce Act* just a few months later may present a new opportunity for rethinking the essential nature of law's relationship to families, and the potential for reforms that address *fundamental* needs for families. As Susan Boyd suggested some years ago:

[We need] to study the efficacy of legal change vis-à-vis the family in light of the

³⁸ Mary Jane Mossman et al, *Families and the Law: Cases and Commentary*, 2nd ed (Concord, Ont: Captus Press, 2015). See also Susan B Boyd, Book Review of *Families and the Law: Cases and Commentary* by Mary Jane Mossman, (2012–13) 28:1 Can J Fam L 105 re an earlier edition of *Families and the Law*.

wider social context . . . [and to be reminded] that what legislation and judges say is not always an accurate description of reality, due to the sometimes false assumptions which our legal system contains about the family and family members. Students can learn to take a critical perspective on policy-oriented legal approaches which ignore the complex nature of social change, of which legal change is only one part.³⁹

Shifting legal and policy makers' views from a narrow focus on dispute resolution to a more fundamental understanding of the ways in which it is "families" that create and sustain the fabric of communities, the viability of the State, and the well-being of all of us as individuals is not an easy task. For those involved in rethinking law's relationship to families in Canada and Australia, however, *The Family in Law* is both essential and inspiring. As the authors suggested, "[T]he choices we make can be constrained by contextual factors, but they can also mean the difference between contributing to oppressive practices and promoting fairer laws and policies that are responsive to the needs of disadvantaged groups in our society."⁴⁰

³⁹ Susan B Boyd, "Teaching Policy Issues in Family Law" (1989) 8:1 Can J Fam L 1 at 15 (editorial).

⁴⁰ *The Family in Law*, *supra* note 2 at 434.