

FAMILY LAW IN THE REPUBLIC OF IRELAND. By A. Shatter. Dublin, Ireland: Wolfhound Press, 1977. Pp. xxxix, 360. £11.00 (hardback), £7.25 (paperback).

Irish family law presents an intriguing blend of old and new for the delectation of the comparative scholar. Divorce is constitutionally prohibited¹ and grounds for annulment² and separation³ are restrictive; yet sex discrimination has been held to offend the Constitution;⁴ the right of marital privacy has been recognized in relation to contraception,⁵ and support obligations⁶ and custody rights⁷ have been rendered sex neutral. The Irish

¹ Article 41.3.20 of the Constitution of Ireland (1937) provides that "[n]o law shall be enacted providing for the grant of a dissolution of marriage." See generally A. SHATTER, *FAMILY LAW IN THE REPUBLIC OF IRELAND*, ch. 9 (1977); J. KELLY, *FUNDAMENTAL RIGHTS IN THE IRISH LAW AND CONSTITUTION*, 199 (2d ed. 1967). The position regarding recognition of foreign divorces has recently been clarified, after some considerable uncertainty, in *Mayo-Perrott v. Mayo-Perrott*, [1958] I.R. 336 (Sup. Ct. 1958), analysed by Webb 8 INT'L & COMP. L. Q. 744 (1959) and Jones, *The Non-Recognition of Foreign Divorces in Ireland*, 2 DUBLIN U. L. REV. 2 (1971); the courts have moved to a position whereby divorces granted in a country of the common domicile of the parties will be recognized. *Bank of Ireland v. Caffin*, [1973] I.R. 123 (High Ct., Kenny, J. 1971), analysed by O'Reilly, *Recognition of Foreign Divorce Decrees*, 6 IR. JURIST (NEW SERIES) 293 (1971); *C. v. C.* (High Ct., Kenny, J. 1973 (unreported)); *Gaffney v. Gaffney*, [1975] I.R. 133 (Sup. Ct. 1975) analysed by Duncan, *Foreign Divorces Obtained on the Basis of Residence and the Doctrine of Estoppel*, 9 IR. JURIST (NEW SERIES) 59 (1974); Webb, *Shotgun Divorces*, 1976 N. Z. L. J. 411; Kerr, *The Need for a Recognition of Divorces Act*, 1 DUBLIN U. L. J. 11 (1976); George, *Family Law in Eire*, 6 FAM. L. 71, 75-76 (1976). See generally A. SHATTER, note 1 *supra*, ch. 10.

² Recent decisions involving duress, fraud, and impotence, however, have evinced a perceptible tendency to break with old approaches. See *B. v. D.* (High Ct., Murnaghan, J. 1974 (unreported)), *K. v. K.* (High Ct., Kenny, J. 1971 (unreported)), and *S. v. S.* (Sup. Ct. 1976 (unreported)); O'Reilly, *Fraud, Duress and Nullity*, 8 IR. JURIST (NEW SERIES) 362 (1972); Binchy, *Impotence, Fraud and Nullity of Marriage: An Irish Restatement*, 51 LAW & JUSTICE — (1978). Significant changes in the grounds for, and effects of, annulment were proposed in a discussion paper, *The Law of Nullity in Ireland* (Prl. 5628, August 1976). The Law Reform Commission is at present studying the law of nullity with a view to its reform.

³ The only grounds for divorce *a mensa et thoro* are adultery, cruelty and unnatural practices. Condonation, recrimination, connivance and collusion are bars to relief. A. SHATTER, *supra* note 1, ch. 8.

⁴ *De Burca v. A. G.*, 111 Ir. L. T. R. 37 (Sup. Ct. 1975) (exemption of women from jury service except on individual application held to discriminate invidiously against women, some members of the Court being influenced by the recent United States Supreme Court decision of *Taylor v. Louisiana*, 419 U.S. 522 (1975), which is noted in 21 N. Y. L. FORUM 505 (1976), 45 U.M.K.C.L. REV. 382, 385 (1975), 3 FORDHAM URBAN L.J. 733 (1975)).

⁵ *McGee v. A. G.*, [1974] I.R. 284 (Sup. Ct. 1973), criticised by Dooley, *Contraception and the Irish Constitution*, 3 SOCIAL STUDIES 186 (1974), but defended by O'Reilly, *Marital Privacy and Family Law*, 65 STUDIES 8 (1977). In *McGee*, the Supreme Court, influenced strongly by *Griswold v. Connecticut*, 381 U.S. 479 (1965), recognised the right of marital privacy in striking down a legislative provision prohibiting the importation of contraceptives. Whether Irish law will follow the example of *Eisenstadt v. Baird*, 405 U.S. 438 (1972), in extending the privacy concept to unmarried adults in quest of contraceptives is a matter of speculation. A. SHATTER, *supra* note 1, at 320, thinks not; but see O'Reilly, *supra* at 17.

⁶ Family Law (Maintenance of Spouses and Children) Act, 1976, s. 5 (no. 11, 1976). See

Supreme Court has, moreover, evinced considerable interest in constitutional developments in the United States in these areas.⁸

Until the publication of *FAMILY LAW IN THE REPUBLIC OF IRELAND*,⁹ no textbook existed which analysed these developments. This gap has now been filled with remarkable skill by a young Irish lawyer who has considerable experience in practical aspects of the subject through his work with Free Legal Aid Centres. The book extends over sixteen chapters, adopting the somewhat conservative structure favoured by the leading English texts.¹⁰ If, however, the structure is conservative, the content is far from being so; the author displays no reluctance to express his criticisms of what he perceives as deficiencies in the law and to make suggestions regarding possible reforms.

The standard of research of Irish materials cannot be faulted. Almost all relevant decisions,¹¹ legislative provisions, and academic commentaries are included. Reference is also made to English and some Commonwealth sources, but a major deficiency is the paucity of reference to United States jurisprudence, particularly since this, as mentioned, has been of such influence in the development of Irish constitutional law in this area.¹²

It is, however, the standard of analysis that is the most impressive feature of the work. It displays a maturity and depth which are astonishing for a person as young as the author (26 years). The manner of expression is, moreover, crystal clear. Whether or not one agrees with the author, there is no doubt regarding what he intends to say.

One might disagree with certain points of emphasis in the book. One would almost certainly take issue with at least some of the criticisms of the law and arguments for reform. Nevertheless, one's overall response must be one of considerable gratitude to the author for having produced, not only for Irish lawyers, but also for all those interested in comparative aspects of family law, a textbook of such depth and maturity.

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also Binchy, *Family Law Reform in Ireland: Some Comparative Aspects*, 25 INT'L & COMP. L.Q. 901 (1976) and Binchy, *New Vistas in Irish Family Law*, 15 J. FAM. L. 637, 658 (1977).

⁷ Guardianship of Infants Act, 1964, s. 6(1). See *In re Tilson Infants*, [1951] I.R. 1 (Sup. Ct. 1950); A. SHATTER, note 1, *supra* at 193.

⁸ Cf. notes 4 & 5 *supra*.

⁹ A. SHATTER, *supra* note 1.

¹⁰ Cf. P. BROMLEY, *FAMILY LAW* (5th ed. 1976) and S. CRETNEY, *PRINCIPLES OF FAMILY LAW* (2d ed. 1976).

¹¹ Research into Irish decisions on family law (and, indeed, other subjects) is a somewhat daunting experience since a large number of decisions are not reported and those that are reported do not appear in print for a considerable time after being handed down.

¹² One would, for example, have expected some reference to United States decisions and academic commentary in relation to abortion and sex discrimination. In fact, abortion is not discussed at all in the book; cf. O'Reilly, *supra* note 5 and Binchy, *Marital Privacy and Family Law: A Reply to Mr. O'Reilly*, 65 *STUDIES* 330 (1977).

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