

Foreword

As a construct of English law, parental responsibility is very strange. A major reason for creating it was to de-emphasise the idea of parents as right-holders with respect to their children, and to focus attention more directly on their duties to them. Yet the definition of parental responsibility is:

all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property (Children Act 1989 s 3(1)).

So it includes responsibilities *and* rights, not to mention powers and authority. It would seem to be better described as the full complement of juristic relations a parent could have regarding a child: full legal parenthood in fact. Except that 'legal' parenthood seems to mean something less. Legal parenthood usually derives from a biological relationship and seems to be simply what is left if parental responsibility is taken away or never conferred. Yet legal parenthood is not an empty legal relationship (there are consequences). It is, however, a good deal weaker than having parental responsibility. Not that there are *no* responsibilities attached to legal parenthood, even without parental responsibility! There is, for example, the support obligation. No wonder students, courts and parents get thoroughly confused.

It might take a small book to sort out the confusion. It would be a useful, though ultimately rather arid task. For parental responsibility is not only a legal issue. It refers to the vastly important range of issues which goes to the heart of the relationship between the generations: issues dealing with how children should be brought up and, in particular, the interaction between the role of parents and the state and its institutions. Since most children find themselves in the care of (or under the control of) some adults in their childhood, usually their actual parents, society could just let them get on with it. Since most parents have an interest in their children doing well, it might not be a bad arrangement for children. But history tells us otherwise. And in any case, the risks to children might be increased in the modern world because social and technological change has meant that, while in the past children were an important means of creating wealth for parents, today children are more likely to be a net economic liability for parents. Anyway, for whatever reason, society is unwilling to leave things solely to parents. On the other hand, it does not want to nationalise child upbringing completely, for a multitude of good reasons. The bureaucracy would be horrendous. Those ill-disposed to totalitarianism would worry about the power the dominant political class would have to indoctrinate the population. The (possibly) primeval urges of parents to design the characters of those they create would have to be smashed. Some might feel the children, too, were losing out on something.

vi *Foreword*

So we steer a path between these extremes. How we negotiate it throws up opportunities for endless debate. But it is not sterile debate. It is urgent and significant to people's lives. This book demonstrates just how urgent and significant it is. A glance through the contents shows this. Many subjects are topical and controversial: corporal punishment, religion, child support and juvenile offending, for example. Others are perhaps less in the public eye, but remain important. We must be grateful to the editors and contributors for giving these subjects such detailed attention.

John Eekelaar, FBA

<http://www.pbookshop.com>

Preface

Most of the chapters in this volume were originally presented to fellow contributors as a paper for discussion at a seminar at King's College London in January 2008. Dr Kathryn Hollingsworth also attended the seminar as a discussant and provided helpful comments on the papers, for which we are very grateful. We should also like to record our thanks to Lord Plant of Highfield, then Head of King's College School of Law, for kindly agreeing to fund the seminar. Our thanks also go to Ms Carolina Cordero, Secretary in the School of Law, for her assistance in organising the day.

Following the seminar discussion, the papers were reworked in the light of comments before being edited for this collection. At this stage Liam D'Arcy Brown provided invaluable assistance in proofreading the final contributions, for which we are most grateful.

Finally, for kindly agreeing to write the foreword, we are especially grateful to John Eekelaar.

The Editors
September 2008

<http://www.pbookshop.com>

Contents

Foreword	v
Preface	vii
List of Contributors	xi
1 Introduction: Parental Responsibility—Law, Issues and Themes	1
STEPHEN GILMORE, JONATHAN HERRING AND REBECCA PROBERT	
Part I Parental Responsibility: General Issues	21
2 Is Anything Now Left of Parental Rights?	23
ANDREW BAINHAM	
3 Establishing and Ending Parental Responsibility: A Comparative View	43
JENS M SCHERPE	
4 The Limits of Parental Responsibility	63
STEPHEN GILMORE	
5 The Degradation of Parental Responsibility	85
HELEN REECE	
Part II The Content of Parental Responsibility	103
6 The Shaming of Naming: Parental Rights and Responsibilities in the Naming of Children	105
JONATHAN HERRING	
7 Parental Responsibility and Religion	123
RACHEL TAYLOR	
8 Parental Responsibility and Education: Taking a Long View	143
DANIEL MONK	
9 Parental Responsibility and Corporal Punishment	165
SHAZIA CHOUDHRY	
10 Parental Responsibility and Children’s Health Care Treatment	185
LYNN HAGGER	
11 ‘Don’t Spend It All at Once!’: Parental Responsibility and Parents’ Responsibilities in Respect of Children’s Contracts and Property	201
ELIZABETH COOKE	

x *Contents*

12 Children's Representation by Their Parents in Legal Proceedings	215
CAROLINE SAWYER	
13 Parental Responsibility and Children's Partnership Choices	237
REBECCA PROBERT	
14 Parental Responsibility, Relational Responsibility: Caring for and Protecting Children after their Death	255
JO BRIDGEMAN	
Part III Responsible Parenting	271
15 Financial Support for Children after Parental Separation: Parental Responsibility and Responsible Parenting	273
NICK WIKELEY	
16 Parental Responsibility and the Responsible Parent: Managing the 'Problem' of Contact	295
JULIE WALLBANK	
17 Parental Responsibility for Juvenile Offending in English Law	315
ROGER LENG	
18 Parental Liability for Harm Caused by Children: A Comparative Analysis	333
PAULA GLIKER	
Index	353

List of Contributors

Andrew Bainham is a Fellow of Christ's College Cambridge and Reader in Family Law and Policy at the University of Cambridge. He was a founder member and first chair of the Cambridge Socio-Legal Group. For over a decade he was editor of the *International Survey of Family Law*, published on behalf of the International Society of Family Law. He is the author of *Children: The Modern Law* (3rd edn, Jordans, 2005). He is currently consultant to the Centre for Social Justice in connection with its ongoing Family Law Review. He is the author of many articles in the field of family law, the most recent of which is 'Arguments about parentage' (2008) 67 *Cambridge Law Journal* 322. He is the editor of *Parents and Children* (Aldershot, Ashgate, 2008).

Jo Bridgeman is a Senior Lecturer in Law at the University of Sussex, where she is a founder member of the Child and Family Research Group and the Centre for Responsibilities, Rights and the Law. Her research and publications are in the field of healthcare law and the law regulating the care of children. Jo's recent monograph *Parental Responsibility, Young Children and Healthcare Law* (Cambridge, Cambridge University Press, 2007) offers a critical analysis of moral, social and legal responsibilities for the healthcare of babies, infants and young children, informed by and developing the feminist ethic of care. This perspective also informs her work on the legal regulation of care, which is developing a conceptual framework of relational responsibility.

Shazia Choudhry is a Lecturer in Law at Queen Mary, University of London, and has also taught at the University of Newcastle (2002 to 2005). Prior to her academic work, she was a practising solicitor. Her areas of expertise and research interests are in family law, the impact of the European Convention on Human Rights on various aspects of family law and the issue of 'rights' within family law in general. Shazia has published a number of articles on this subject which have been widely cited both nationally and internationally.

Elizabeth Cooke is a Professor of Law at the University of Reading; her main interests are in property law and family law. The sixth edition of *The Family, Law and Society*, written with Brenda Hale, David Pearl and Daniel Monk, was published in summer 2008. From July 2008, she is serving for five years as a Law Commissioner for England and Wales.

Paula Giliker is Professor of Comparative Law at the University of Bristol. She has previously taught at the University of Oxford and Queen Mary, University of London. Paula has published extensively in the field of comparative contract and tort law, is the co-author of *Tort* (3rd edn, Sweet & Maxwell, 2008) and recently edited *Re-examining Contract and Unjust Enrichment: Anglo-Canadian Perspectives* (Leiden, Brill, 2007).

xii *List of Contributors*

Stephen Gilmore is Lecturer in Family Law at King's College London. He is particularly interested in the law on parental responsibility and the resolution of parental disputes. Recent publications include: 'Contact/Shared Residence and Child Well-being: Research Evidence and its Implications for Legal Decision-Making' (2006) 20 *International Journal of Law, Policy and the Family* 344; and 'Disputing Contact: Challenging Some Assumptions' [2008] 20 *Child and Family Law Quarterly* 285. He is currently co-authoring the third edition of *Hayes and Williams: Family Law, Principles, Policy and Practice* (Oxford, Oxford University Press) for publication in 2009.

Lynn Hagger is a Lecturer in Law at the University of Sheffield. Her research interests are in medical law in general and children's issues in particular. Her publications focus on the empowerment of children through the use of human rights instruments. She is currently writing a book on this theme which is due to be published in June 2009: *The Child as Vulnerable Patient: Protection and Empowerment*. Her research interests have been greatly assisted by her parallel career in the NHS as a non-executive director for 20 years. She was Chairperson of the Sheffield Children's Hospital NHS Foundation Trust for nine years until January 2008. Here she established a Clinical Ethics Forum and Patients' Advisory Group to help to ensure that ethical standards of care were offered to patients and their families.

Jonathan Herring is a Fellow in Law at Exeter College, University of Oxford. He is author of several books, including *Criminal Law: Text, Cases and Materials* (Oxford, Oxford University Press, 2008); *Family Law* (Harlow, Pearson, 2007); *Medical Law and Ethics* (Oxford, Oxford University Press, 2008); and *Criminal Law* (Basingstoke, Palgrave, 2006). He has also written widely on issues relating to criminal law, family law and medical law. In 2007 he was the George P Smith Distinguished Visiting Professor-Chair at the University of Indiana. He is currently working on a book on family law and human rights (with Shazia Choudhry) and a book on law and older people.

Roger Leng is Reader in Law at the University of Warwick. His work spans the fields of criminal law, evidence and procedure. He is a former editor of the *International Journal of Evidence and Proof* and has held consultancies with the Law Reform Commission of Canada and the Royal Commission on Criminal Justice. His most recent book (with R Taylor and M Wasik) is *Blackstone's Guide to the Criminal Justice Act 2003* (Oxford, Oxford University Press, 2004).

Daniel Monk is a Senior Lecturer in Law at Birkbeck College, University of London. He has published articles on various issues relating to children's rights, education law and the sociology of childhood, and is co-author (with B Hale, D Pearl and E Cooke) of *The Family, Law and Society* (6th edn, Oxford, Oxford University Press, 2008). He is the co-editor (with J Bridgeman) of *Feminist Perspectives on Child Law* (London, Cavendish, 2000) and (with L Moran and S

List of Contributors xiii

Beresford) of *Legal Queeries* (London, Cassells, 1998). He is Assistant Editor of *Child and Family Law Quarterly*.

Rebecca Probert is a Senior Lecturer at the University of Warwick, teaching family law and child law. She has just completed a book on the Clandestine Marriages Act of 1753—*Marriage Law and Practice in the Long Eighteenth Century: A Reassessment*—which is due to be published by Cambridge University Press in 2009. She is also co-author (with J Masson and R Bailey-Harris) of *Cretney: Principles of Family Law* (London, Sweet & Maxwell, 2008), editor of *Family Life and the Law: Under One Roof* (Aldershot, Ashgate, 2007) and co-editor (with Jo Miles) of *Sharing Lives, Dividing Assets: An inter-disciplinary study* (Oxford, Hart, 2009).

Helen Reece is a Reader in Law at Birkbeck College, University of London. Her current research interests include conceptions of responsibility in the context of the family. She is the author of *Divorcing Responsibly* (Oxford, Hart, 2003). Other recent publications include 'From Parental Responsibility to Parenting Responsibility' in Michael Freeman (ed), *Law and Sociology: Current Legal Issues* (Oxford, Oxford University Press, 2006) and 'The Autonomy Myth: A Theory of Dependency' (Review article) [2008] 20 *Child and Family Law Quarterly* 109.

Caroline Sawyer is Reader in Law at Oxford Brookes University. Her research interests include issues of legal competence and legal personality, especially of children and non-nationals. She is currently working on statelessness and British citizenship as well as the legal status of children.

Jens M Scherpe is a Fellow of Gonville and Caius College Cambridge, and a University Lecturer in Law at the University of Cambridge, where he teaches comparative law and family law. Previously he was Research Fellow and Head of the Department for the Law of the Nordic Countries at the Max Planck Institute for Comparative and Private International Law in Hamburg. He is a member of the International Advisory Board of the *Zeitschrift für das gesamte Familienrecht* (FamRZ) and member of the Wissenschaftliche Vereinigung für Familienrecht eV.

Rachel Taylor is Penningtons Tutor in Law at Christ Church, University of Oxford. Her research interests are in Family Law and Human Rights Law. Recent publications include: 'Reversing the Retreat from Gillick? *R (Axon) v Secretary of State for Health*' [2007] 19 *Child and Family Law Quarterly* 81 and (with Jonathan Herring) 'Relocating Relocation' [2006] 18 *Child and Family Law Quarterly* 517.

Julie Wallbank is a Senior Lecturer in Law at the School of Law, University of Leeds. Her areas of expertise and research interests are family law, feminist legal theory and gender and the law. She has written widely on gendered aspects of family law, including the regulation of reproductive technologies, child support and contact.

xiv *List of Contributors*

Nick Wikeley has been a Judge of the Administrative Appeals Chamber of the Upper Tribunal since November 2008 and is an Emeritus Professor at the University of Southampton. His books include *Child Support in Action* (Oxford, Hart, 1998), with Gwynn Davis and Richard Young) and *Child Support Law and Policy* (Oxford, Hart, 2006). He was one of the authors of the report on the 'Relationship breakdown and child support study' (DWP Research Report No 503, 2008).

<http://www.pbookshop.com>