A turn to rights, especially if motivated by the above concerns, is problematic. The HRA may endure, or be replaced by another rights-based instrument. The common law's priority does not require reassertion. There is no shortage of review applications on common law grounds and the field continues to develop in dynamic ways which reflect traditional, home-grown concerns for good administration and public goals. A turn to rights would not reassert the common law's priority, but render it a mere replica of human rights law, a duplication, and thus largely otiose. Those who favour "synthesis" of the two fields fail to appreciate that each field performs distinctly valuable and complementary functions. Procedural fairness, through the subfield of consultation, has promoted important societal interests, such as meaningful citizen participation in public life, and in doing so performed valuable functions distinct from those performed by individualist fields. To return common law review to a narrow individualist conception would mean that much of value is lost, with no apparent gain in rights protection, given rights are protected strongly by dedicated fields. Some paths are best left untrodden.

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A HIPPY-HIPPY CLEAN BREAK?

THE media were unsurprisingly interested when the Supreme Court considered the case of a poverty-stricken New Age traveller turned multi-millionaire whose former wife appeared years after divorce to claim a share of his subsequently acquired wealth (*Vince v Wyatt* [2015] UKSC 14). The case also raised an important point of legal principle.

Ms. Wyatt and Mr. Vince married in 1981, having chosen "the new age or traveller creed and lifestyle" ([2013] EWCA Civ 495, at [4]). They subsisted largely on state benefits, and separated after only around two years of marriage, but did not formally divorce until 1992. By the time of the Supreme Court judgment, the only child of whom they were both parents, Dane, was aged 31 and lived with Mr. Vince. Ms. Wyatt then lived with the second "child of the family", her daughter, Emily, born before she met Mr. Vince (whom he could nevertheless have been liable to support during her minority: Matrimonial Causes Act 1973 ("MCA"), ss. 23–25), and two adult children that Ms. Wyatt had with another partner post divorce. Ms. Wyatt's home had been subject to a local authority "Hazard Awareness Notice", she was in poor health, and subsisted on wages from non-continuous low-paid employment and benefits. She claimed to have withdrawn from several degree courses during the marriage for reasons including childcare, finances, and Mr. Vince's discouragement. Mr. Vince,

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meanwhile, albeit "the most improbable candidate for affluence" ([2013] EWCA Civ 495, at [35]), had been brilliantly successful in business after the divorce: the sole shareholder of a green energy company he had started around 1995, with a value of at least £57 million in 2015. By then, he also had a second wife and a young son.

In 2011, almost two decades after the divorce, Ms. Wyatt applied for financial provision from Mr. Vince. It was unclear whether she had done so at the time of divorce notwithstanding Mr. Vince's then penury, since the relevant documentation had not survived. She secured nominal child maintenance in 1992, but had failed to secure substantial maintenance for herself and the children during the 1990s; it was apparently accepted that Mr. Vince was unable to support Dane until the later years of Dane's minority. There remained, however, a period of around 14 years when Mr. Vince was becoming wealthy and Ms. Wyatt made no apparent attempt to seek support from him.

Ms. Wyatt based her 2011 claim on the fact that she had cared for the children without adequate support and often in conditions of poverty, albeit that both Dane and Emily had spent time living with Mr. Vince. Ms. Wyatt now sought a better home for herself and her family and a fund that could maintain her for life given her limited earning capacity. Mr. Vince sought to have that claim struck out altogether on the basis of delay. Deputy Judge Nicholas Francis Q.C.'s refusal to strike out the claim was reversed by the Court of Appeal. The Supreme Court unanimously upheld Ms. Wyatt's appeal, reinstating her claim and remitting it to the High Court.

Lord Wilson, giving the judgment of the Supreme Court, agreed with the Court of Appeal that it was likely that no financial order had been sought or made at the time of divorce. This meant that Ms. Wyatt was not precluded from making her 2011 application. The possibility that a claim had been made and dismissed on divorce was in the Supreme Court's view "so remote … as entirely to be discounted", since Ms. Wyatt was then a young wife and mother (at [4]). Then as now the court had a wide discretion to order a redistribution of property between divorcing spouses in light of various factors, but had to give first consideration to the welfare of minor children (MCA, s. 25).

A court may strike out an ancillary relief application if, inter alia, it appears that the statement of the case "discloses no reasonable grounds for bringing or defending the application" or "is an abuse of the court's process or is otherwise likely to obstruct the just disposal of the proceedings" (Family Procedure Rules SI 2010/2955, r. 4.4(1)). The Court of Appeal found both grounds to be met. Jackson L.J. held that bringing an application with no real prospect of success, which he thought described the 2011 claim, was itself an abuse of process. (Unlike in other proceedings, in family proceedings, it was impermissible to give summary judgment: cf. Civil Procedure Rules 1998, SI 1998/3132, r. 24.2.)

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The Supreme Court disagreed with Jackson L.J.: the inability to give a summary judgment in financial remedy cases was explained by the court's duty under s. 25 MCA to consider all the circumstances of the case. This duty reflects the distinctly paternalistic role performed by the courts in family matters and, in the Supreme Court's view, was inconsistent with a power summarily to dismiss Ms. Wyatt's claim on the basis that it had no real prospect of success. Lord Wilson also disagreed that Ms. Wyatt's statement of case disclosed no reasonable grounds for bringing the application, given that there should be no inquiry as to real prospects of success. Even if it had been proper to ask whether her claim had such prospects, Lord Wilson considered the case to have a real prospect of modest success.

Of course, the Supreme Court's conclusion does not necessarily mean that Ms. Wyatt should be given what she claims, or that any provision should be made at all. In fact, Lord Wilson considered the £1.9 million award sought to be "out of the question" (at [33]), identifying several "formidable difficulties" with the claim that could eliminate it altogether (at [30]). Those included the short duration of the marital cohabitation and the length of time since it ended, the fact that the standard of living during the marriage (MCA, s. 25(2)(c)) "could not have been lower", and the fact that Mr. Vince had begun his wealth creation 13 years after the breakdown such that Ms. Wyatt had not contributed to it.

Lord Wilson also noted Ms. Wyatt's "inordinate" and not fully explained delay in bringing the application (at [31]). He strikingly described it as a "dangerous fallacy", propounded by advocates of reform in this area, that the law always requires rich husbands to meet the needs of their ex-wives (at [33]). But he held it consistent with the nature of marriage that there was no time limit for bringing the claim, and it is significant that, had Ms. Wyatt brought a successful claim on divorce, Mr. Vince could still have been supporting her even now.

Lord Wilson was unsure that Ms. Wyatt could show relationship-generated needs that Mr. Vince should meet (cf. *Miller v Miller; McFarlane v McFarlane* [2006] UKHL 24, at [11]). But he identified a potentially "much more powerful" argument (at [34]), based on "the contributions [Ms. Wyatt] has made . . . to the welfare of the family, including . . . by looking after the home or caring for the family" (MCA, s. 25(2)(f)), which need not be made during the relationship. Lord Wilson's view is interesting, since the judiciary have recently tended to shy away from specifically evaluating homemaking contributions, preferring to subsume them into the principle that there should be no discrimination against homemaking spouses (see e.g. *Miller; McFarlane*).

The Supreme Court's conclusion that the claim should not have been struck out before trial, whatever its difficulties, has merit. Lord Wilson described the delay and the contributions as "magnetic factors" pulling in opposite directions but worth investigating (at [36]), and he predicted an award enabling Ms. Wyatt to purchase a more comfortable mortgage-free

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home for herself and her dependants. The Court hoped that the dispute might now be settled, but, given Mr. Vince's apparent refusal to compromise, there may be more published judgments in the case. While it would be fascinating to discover how any award will relate to the judicially developed principles of need, compensation, and sharing (*Miller; McFarlane*), it is tempting to suggest that Mr. Vince should have made some substantive provision long ago, particularly given his obligation (upheld by the Supreme Court) to pay Ms. Wyatt's costs.

Vince contains lessons for other couples, not least the importance of retaining key documents. It highlights the importance of reaching an agreement on finances at the time of divorce and having it enshrined in a consent order, even if the couple do not then have any significant assets and even if the order simply dismisses all claims forever. While financial provision in a properly evidenced consent order made at the time of divorce might still be varied, such an order would reduce the scope for a new application or order at a later date (*Barder v Calouri* [1988] A.C. 20). The decision is also a reminder that, under English law, a marriage may involve lifelong obligations even once formally dissolved, notwithstanding the court's duty to consider a "clean break" (MCA, s. 25A).

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