



Routledge Handbook of Family Law and Policy

Edited by John Eekelaar and Rob George

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Preface

This Handbook is about family law *and* policy. The linkage is crucial and determines the orientation of all the contributions. These do not aim at exposition of sets of legal provisions or even, primarily, at analysis of the differences between the laws of various jurisdictions. Rather, the purpose has been to focus on the most significant *issues* that have been commanding the attention of family law policymakers (among which we include the courts) in recent years. Of course this requires a certain degree of legal exposition. But policy issues may be similar in varying legal contexts, so the legal details are usually of less interest than the overall direction of policy.

For that reason we have sometimes felt able to concentrate on a specific jurisdiction or jurisdictions as exemplars of how they are dealing with policy issues which are also likely to arise in other jurisdictions. Hence, the Netherlands and South Africa provide striking cases of possible strategies regarding the recognition of diverse forms of family living (Chapters 1.2 and 1.3); Canada has developed new ways of settling post-divorce financial problems (Chapter 2.7); the UK has pioneered regulation of assisted reproductive technologies (Chapter 3.1) (with Australia providing contrasting approaches between its states: Chapter 3.2) and is struggling with how to respond to domestic violence (Chapter 5.2), growing pressures on the child protection system despite economic austerity (Chapter 4.1) and family migration (Chapter 7.3). The United States provides particularly vivid examples of significant policy debates concerning the role of marriage (Chapter 1.1) and its extension to same-sex couples (Chapter 1.5).

Elsewhere, a more comparative approach is adopted. Sometimes this is within chapters, for example, between common and civil law regarding post-divorce property and finances (Chapter 2.6) and inheritance (Chapter 2.8); or between different European regions regarding family support (Chapter 6.1); or more globally concerning divorce law (Chapter 2.1), divorce trends (Chapter 2.2), unmarried cohabitation (Chapter 1.5), and family justice institutions (Chapter 6.5). At other times, the comparison is found across separate chapters; for example concerning post-divorce parenting (Chapters 3.3–3.5), divorce law (Chapters 2.1, 2.3–2.5), family support (Chapters 6.1–6.2), care of the elderly (Chapters 6.3–6.4) and provision for children removed from their families (Chapters 4.2–4.3).

In some areas a potential (but seldom completely effective) means for achieving a common policy approach is found in international instruments, such as the UN Convention on the Rights of the Child (Chapter 4.6), the African Charter on the Rights and Welfare of the Child (Chapter 4.5), the UN Convention on the Elimination of all Forms of Discrimination against Women (Chapter 5.1), the Hague Conventions on Child Abduction and Intercountry Adoption (Chapter 7.1), and the Hague Convention on Child Protection along with its EU

equivalent in the Brussels IIbis Regulation, as well as attempts at the international level to find a common approach to relocation cases (Chapter 7.2). The European Convention for the Protection of Human Rights and Fundamental Freedoms has had an important influence on discrete policy areas, for example, parental rights and some aspects children's rights (Chapters 3.3, 4.1 and 4.6), gender and identity (Chapter 5.1), domestic violence (Chapter 5.2), migration (Chapter 7.3) and certain features of artificial reproductive processes (Chapter 3.1). More theoretical considerations, potentially applicable across jurisdictions, underpin two chapters, one providing an approach to children's rights generally (Chapter 4.4) and the other a consideration of possible policy responses to diverse cultures within jurisdictions (Chapter 7.4).

We acknowledge the support and advice provided by the Advisory Panel for this project: Waheeda Amien, Benoit Bastard, Sanford Katz, Mavis Maclean, Masayuki Murayama and Carol Sanger. We express our deepest appreciation to all the contributors to this book. They do not hold identical views on all the issues; that would not be expected. But they have presented the policy landscape as they see it, including the rich body of literature that accompanies it. The result should be both informative and enlightening.

John Eekelaar
Rob George
October 2013

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Part One

Marriage and alternative relationships

The changing face of marriage

Marsha Garrison

The decline—and continuing appeal—of marriage

Across the industrialized world, young adults are marrying later and increasing numbers may not marry at all.¹ Although marriage has declined in some regions more than others, the trend away from marriage seems to be universal. Even in the United States, which has long had one of the highest marriage rates among industrialized nations, a 2011 survey found that barely 50 per cent of American adults were married—a record low.² In many nations, almost half of marriages end in divorce. And, increasingly, couples choose to live together before or as an alternative to marriage. Except in Asia, the proportion of children born outside marriage has also skyrocketed.³

With the decline of marriage has come a shift in its meaning. Traditional, ‘institutional’ marriage based on fixed, gender-based roles has given way to marriage based on companionship or, more recently, personal fulfillment.⁴ Reflecting this new, individualized view of

1 Eurostat, *Marriage and Divorce Statistics*, 2012, http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/Marriage_and_divorce_statistics (accessed 6 January 2014); National Center for Marriage and Family Research, *Family Profile on Median Age at First Marriage in the U.S.*, 2008, http://ncfmr.bgsu.edu/pdf/family_profiles/file78895.pdf (accessed 6 January 2014); D.B. Elliott *et al*, *Historical Marriage Trends from 1890–2010: A Focus on Race Differences*, Population Association of America, SEHSD Working Paper Number 2012–12, 2012, www.census.gov/hhes/socdemo/marriage/data/acs/ElliottetalPAA2012paper.pdf (accessed 6 January 2014); *Japanese Marriage Trends in 2002: Later Unions and More Divorce Families*, Social Trends: Series No. 9, <http://unpan1.un.org/intradoc/groups/public/documents/APCITY/UNPAN016635.pdf> (accessed 6 January 2014).

2 In 1978, 28 per cent agreed with this statement. Pew Research Center, *The Decline of Marriage and Rise of New Families*, 2010, <http://pewresearch.org/pubs/1802/decline-marriage> (accessed 6 January 2014).

3 S.J. Ventura, *Changing Patterns of Nonmarital Childbearing*, 2009, fig. 6, www.cdc.gov/nchs/data/databriefs/db18.htm#findings (accessed 6 January 2014).

4 P.R. Amato, ‘Institutional, Companionate, and Individualistic Marriages: Change over Time and Implications for Marital Quality’, in M. Garrison and E.S. Scott (eds), *Marriage at the Crossroads: The Brave New World of Twenty-First Century Families*, Cambridge: Cambridge University Press, 2012, pp. 107–25.