Index

Abortion in US, 56
Adoption
  China, child support in, 211, 212
  in Colombia
    overview, 131
  in Germany
    overview, 83
  in India
    datatka (form of adoption), 230–231
    neglected and abused children, 230
    under personal laws, 230–231
  in Sweden, 173–174
Ahmed, Farrah, 2–3, 4, 5–6, 7–8
Alimony or maintenance
  decline of, 11–12
  in Germany, 101–102
  overview, 12, 97
  after separation, 100–101
  “community of accrued interests,” 97–98
  criticisms of, 98–99
  during marriage, 99–100
  pension rights, 97
  in Islamic family law, 262
  in US, 11–12
Alternative dispute resolution (ADR)
  autonomy as reason for, 7–8
  Canada, religious ADR in, 8, 244
  complexity as reason for, 7
  cost as reason for, 7
  in England and Wales, promotion of
    family mediation, 41–42
  India, religious ADR in
    overview, 7–8, 239–241
    autonomy and, 239, 245–247
    criticism of, 243–244
    religious identity and, 241–242
    women and, 243–245
  in Islamic family law, 8
  reluctance to use, 9
  unequal bargaining power and, 8
An-Na’im, Abdullahi Ahmed, 6, 8
Argentina
  Civil Code of 1876, 134, 150
  constitutionalisation of family law in,
    134, 156
  filiation by birth in, 150–151
  gender identity in, 141
  marriage in, 135, 137–138
  multi-parenting in, 155
  National Civil and Commercial Code, 134, 150
  same-sex marriage in, 137–138
Assistive reproductive technologies (ARTs)
  in England and Wales, Sweden compared,
    174–175
  in Germany, 83–84
  in Latin America, 130–131
  National Board of Health and Welfare, 164
  in Sweden
    attempt to conceive as prerequisite,
      165–166
    England and Wales compared, 174–175
    gamete donation, 163–164
    reluctance to embrace, 174–175
    restrictions on, 165–166
    surrogacy, 165, 174, 177
    US compared, 174–175
    womb transplantation, 177
  in US
    overview, 65–66
    Sweden compared, 174–175
Australia
  overview, 106–109
  Australian Council of Social Service, 115–116
  Australian Institute of Family Studies, 119, 124
  Australian Law Reform Commission, 106, 113
  autonomy in, 16
  de facto relationships in, 108, 109
  dependent children in, 108
divorce in
empirical evidence of effects of, 114
gender equalisation, 3
women and children, effects on, 114–118
Family Law Act 1975 (Cth)
overview, 108–109
de facto financial disputes under, 125
dejure discretion under, 110
“just and equitable” requirement under, 111–112, 113–114
lawyers, application by, 123
property division under, 121
separate property regime under, 109–110
gender in
divorce, equalisation in, 3
pay gap, 118
“just and equitable” requirement
overview, 111–112
factors considered, 113
lack of definition, 113–114
legal aid in, 107
NASTEM Income and Wealth Report, 117–118
Productivity Commission, 112–113
property division in
overview, 12
adjudicated cases, 124–126
contributions versus need, 110–111, 118
de facto financial disputes, 125
definition of property, 109–110
diversity in, 126
factors affecting, 120–121
fairness, perception of, 122–123
high-asset versus moderate-asset cases, 125
informal agreements, 119–122
judicial discretion, 110
lawyers, role of, 123–124
separate property regime, 109–110
statistics, 119
uncertainty in, 126
reform proposals in
consensus, difficulty in achieving, 126–127
historical background, 112–113
limitations of, 127
need for, 127
research, need for, 126
Sweden compared, 159
Women’s Legal Service Victoria, 107
Autonomy
ADR, as reason for, 7–8
in Australia, 16
in China, 14
in England and Wales
overview, 40
family mediation, promotion of, 41–42
pre-nuptial agreements, 42–44
in Germany
overview, 15–16, 102–103
divorce and, 103
pre-nuptial agreements and, 103–104
same-sex marriage and, 103
unequal bargaining power and, 103
in India
group autonomy, 245–247
personal laws and, 234
religious ADR and, 239, 245–247
individualisation and, 14–15
judicial discretion and, 16
in Latin America, 15
in Sweden, 15
ture extent of choice, 13–14
in US
overview, 13
contracts and, 62
increases in, 48–50
Bakker, P., 183
Beck-Gernsheim, Elisabeth, 14–15
Berggren, Henrik, 160
Bonthuys, E., 202
Brazil
Civil Code, 134
Constitution, 134, 139
constitutionalisation of family law in, 134
marriage in, 135, 138–139
multi-parenting in, 155
same-sex marriage in, 138–139
Canada, religious ADR in, 8, 244
Child care and rearing
in Chile, 152–155
China, preference for maternal
child-rearing in, 206, 208, 212–213
England and Wales, equalisation of gender
roles in, 3
equalisation of gender roles, 3
Germany, equalisation of gender roles in, 3
Child care and rearing (cont.)
in Latin America, 132
Sweden, equalisation of gender roles in, 3
Child custody or arrangements
in Chile, 154–155
in China
changes in, 216
determinations of, 212–214
litigated divorce and, 219–220
in England and Wales, consideration of domestic violence, 38–40
in Germany
Cochemer Model, 89
contact rights, 90–91
50:50 shared care, 89–90
"high-conflict parents," 89
joint parental responsibility model, 87
post-separation parental responsibility, 88–89
unwed biological fathers and, 87–88
in Islamic family law, 266–267
in US
gender-based presumptions, 67
historical background, 66–67
shared custody, 67–68
Child endangerment in Germany
forced adoption, 93
progressive measures regarding, 91–93
Children’s rights
in China, 18
in Latin America, 18
Child support
in China
overview, 203–204
adoption and, 211, 212
amount of, 214–215
changes in, 215–216
continuation of parent-child relationship and, 208, 212
factors considered, 214–215
limitations of actions, 220–222, 224
method of payment, 215
negotiated agreements, 214, 215
in 1950s, 204–207
in 1980s, 207–210
non-payment of, 216–217, 222–223
post-divorce obligations, 205–206, 208
recommendations regarding, 222–224
registered divorce and, 217–219
remarriage, effect of, 206, 208–209
step-parents and, 211–212
termination of obligation, 210–211
in Germany, 102
in Islamic family law, 267
in US
filial responsibility statutes, 69–70
financial burdens of, 69
financial inequality and, 70–71
freedom of choice, 68–69
Chile
child custody in, 154–155
child-rearing in, 152–155
Civil Code, 134, 139, 146, 152–153, 154
Civil Marriage Law, 140
Constitution, 134, 140
constitutionalisation of family law in, 134
filialization by birth in, 145–147
gender identity in, 141
marriage in, 139–141
same-sex marriage in, 139–141
shared personal care in, 152–154
China
adoption, child support and, 211, 212
autonomy in, 14
child custody in
changes in, 216
determinations of, 212–214
litigated divorce and, 219–220
children’s rights in, 18
child support in
overview, 203–204
adoption and, 211, 212
amount of, 214–215
changes in, 215–216
continuation of parent-child relationship and, 208, 212
factors considered, 214–215
limitations of actions, 220–222, 224
method of payment, 215
negotiated agreements, 214, 215
in 1950s, 204–207
in 1980s, 207–210
non-payment of, 216–217, 222–223
post-divorce obligations, 205–206, 208
recommendations regarding, 222–224
registered divorce and, 217–219
remarriage, effect of, 206, 208–209
step-parents and, 211–212
termination of obligation, 210–211
Civil Code, 222
Civil Procedure Law, 217
Common Program of the Chinese People’s
Political Consultative Conference, 205
common property regime in, 218
Communist Party Central Committee, 207
Constitution, 212
divorce in
litigated divorce, 219–220
registered divorce, 203–204, 217–219
family planning policy in, 219
General Rules of the Civil Law, 224
Implementing Marriage Law Committees, 207
Instructions on Principles to Deal with
Present General Matrimonial Cases, 204–205
Marriage Law Amendment 2001
changes in child support under, 216
continuation of parent-child
relationship under, 210, 212
effect of, 217
enactment of, 210
maternal child-rearing, preference for,
212–213
negotiated agreements for child support
under, 214
registered divorce under, 217
Marriage Law 1950
child support, post-divorce obligations,
205–206
continuation of parent-child
relationship under, 205
enactment of, 205
general provisions, 206
implementation of, 207
Marriage Law 1980 compared, 207–210
maternal child-rearing, preference for,
206
remarriage, effect of, 206
resistance to, 206–207
Marriage Law 1980
child support, post-divorce obligations,
208
continuation of parent-child
relationship under, 208
enactment of, 207–208
Marriage Law 1950 compared, 207–210
maternal child-rearing, preference for,
208
remarriage, effect of, 208–209
Office of Publicizing and Checking the
Implementation of the Marriage Law, 207
step-parents, child support and, 211–212
in 21st Century, 210
women in, 206
Civil partnerships or unions
in England and Wales
overview, 10
evolution of, 20
future of, 20–21
heterosexual couples, 21–22
review of, 21
statistics, 20
in South Africa
overview, 182
defined, 197–198
in hierarchy of marital relations,
197–198
marriage versus, 10
Cohabitation
England and Wales, property division in,
31–33
in Germany, 96
marriage versus, 9–10
in South Africa
in hierarchy of marital relations,
200–201
inheritance rights and, 190–191,
192–197
in US
changing demographics, 52
contracts, use of, 61–62
Colombia
adoption in
overview, 131
filiation by adoption, 151–152
Children and Adolescent Code, 151
Civil Code, 134, 135
Constitution, 134, 136
constitutionalisation of family law in,
134, 156
filiation by birth in, 149–150
gender identity in
intersex children, 141–142
sex change surgery, 143
sexual ambiguity, 142–143
marriage in, 135–136
same-sex marriage in, 135–136
Constitutionalisation of family law
in Argentina, 134, 156
in Brazil, 134
Constitutionalisation of family law (cont.)
in Chile, 134
in Colombia, 134, 156
in Germany, 77, 81
in Latin America, 128–129, 156–157
in Mexico, 134

Contraception in US, 56

Convention on the Rights of the Child
overview, 131–132
child support and, 212, 222, 223

genetic testing and, 167–168

Deech, Ruth, 30
De Vaus, Davis, 116–117
Dewar, John, 126
Diduck, Alison, 41

Divorce or dissolution
in Australia
empirical evidence of effects of, 114
gender equalisation, 3
women and children, effects on,
114–118
in China
litigated divorce, 219–220
registered divorce, 203–204, 217–219
in England and Wales
amicable post-separation
arrangements, undermining of,
23–24
fabrication, incentives for, 23
grounds for, 22
judicial consideration of facts, lack of, 23
no-fault divorce, calls for, 24
review of, 24
gender, equalisation of, 3
in Germany
overview, 95
alimony, 101–102
autonomy, 103
in Islamic family law
judicial decree, 264
khul (mutual agreement), 264, 265
registration of, 278–279
talaq (unilateral repudiation), 264–265
marriage, effect on, 10
South Africa, dissolution of customary
marriage in, 183
in US
alimony, decline in, 11–12, 58–59
changing demographics, 52
Domestic partnerships. See Cohabitation
Domestic violence

child contact and, 13
complexity of, 13
in England and Wales
overview, 34
child arrangement cases, consideration
in, 38–40
criminalisation of, 34–36
forced marriage and, 34–36
funding of response to, 12–13
public law crisis regarding, 37–38
statistics, 36, 37
in Germany, 91

Dworkin, Ronald, 133

England and Wales
overview, 19, 47
access to justice in, 44–46
ADR in, promotion of family mediation,
41–42
Anti-Social Behaviour, Crime and
Policing Act 2014, 35
assistive reproductive technologies (ARTs)
in, Sweden compared, 174–175
autonomy in
overview, 40
family mediation, promotion of, 41–42
pre-nuptial agreements, 42–44
child care in, equalisation of gender roles,
3
Children Act 1989, 38
Children and Families Act 2014, 37
Civil Partnership Act 2004, 20, 22
civil partnerships in
overview, 10
evolution of, 20
future of, 20–21
heterosexual couples, 21–22
review of, 21
statistics, 20
divorce in
amicable post-separation
arrangements, undermining of, 23–24
fabrication, incentives for, 23
grounds for, 22
judicial consideration of facts, lack of, 23
no-fault divorce, calls for, 24
review of, 24
domestic violence in
overview, 34
child arrangement cases, consideration in, 38–40
criminalisation of, 34–36
forced marriage and, 34–36
funding of response to, 12–13
public law crisis regarding, 37–38
statistics, 36, 37
Family Justice Review, 37, 38
Human Rights Act 1998, 21
Labour Party, 32, 34
Latin America compared, 130–131
Law Commission, 26, 30, 31–32, 44
legal advisers, 24
Legal Aid, Sentencing and Punishment of Offenders Act 2012, 46
Legal Aid Agency, 46
legal aid in, 45–46
Marriage Act 1949, 24–25
Marriage (Same-Sex Couples) Act 2013, 20
marriage in
overview, 19–20
forced marriage, 34–36
formalities of, 24–26
"non-marriage," 25–26
pre-nuptial agreements, 42–44
Sharia Councils, 26–28
Matrimonial Causes Act 1973, 20, 22, 110–111
pre-nuptial agreements in, 42–44
private law crisis in, 44–46
property division in
overview, 28
cohabitation and, 31–33
rules versus discretion, 28–31
uncertainty in, 29–31
women allegedly favoured by, 29–31
reasonable ordinary parent standard in, 16–17
religion in
freedom of choice, 6
overlap with family law, 4
Serious Crime Act 2015, 36
Sharia Councils, 26–28
Southall Black Sisters, 27
Sweden compared, 159
women in
expansion of rights, 206
property division allegedly favouring, 29–31
Espejo Yaksic, Nicolás, 3–4, 15, 18
Esping-Andersen, G., 159
European Convention on Human Rights (ECHR)
civil partnerships and, 21
German Basic Law and, 80, 86, 87–88
Sweden, right to parenthood in, 162
Family violence. See Domestic violence
Fehlberg, Belinda, 3, 12, 16, 120
Fish, Stanley, 127
Fisher, Hayley, 114–115, 117
Gamete donation in Sweden, 163–164
Gender. See also Women in Australia
divorce, equalisation in, 3
pay gap, 118
change in gendered roles, 2
care child, equalisation of gender roles, 3
discrimination against women, 2–3
divorce, equalisation in, 3
in India
personal laws, gender differences in, 227
personal laws and, 236–237
religious ADR and, 243–245
Latin America, equalisation of gender roles in, 3
US, gender-based presumptions in child custody in, 67
Gender identity
in Argentina, 141
in Chile, 141
in Colombia
intersex children, 141–142
sex change surgery, 143
sexual ambiguity, 142–143
Germany, transsexuals in, 78
intersex children and, 3–4
in Latin America
overview, 141
intersex children and, 3–4
Mexico, sexual ambiguity in, 143–144
Genetic testing
in Germany, 80
parenthood and, 17
in Sweden, 167–168
Germany
overview, 77, 81–82
adoption in
Germany (cont.)
overview, 83
forced adoption, 93
alimony in, 101–102
assistive reproductive technologies (ARTs) in, 83–84
autonomy in
overview, 15–16, 102–103
divorce and, 103
pre-nuptial agreements and, 103–104
same-sex marriage and, 103
unequal bargaining power and, 103
Bürgerliches Gesetzbuch (Civil Code) alimony under, 101–102
child arrangements under, 88, 90
child endangerment under, 92–93
generic testing under, 80
maintenance under, 99–101
unwed biological fathers under, 86
child arrangements in Cochemer Model, 89
contact rights, 90–91
50:50 shared care, 89–90
“high-conflict parents,” 89
joint parental responsibility model, 87
post-separation parental responsibility, 88–91
unwed biological fathers and, 87–88
child care in, equalisation of gender roles, 3
child endangerment in forced adoption, 93
progressive measures regarding, 91–93
children born out of wedlock in, 78
child support in, 102
cohabitation in, 96
constitutionalisation of family law in, 77, 81
divorce in
overview, 95
alimony, 101–102
autonomy, 103
domestic violence in, 91
fatherhood in mixed principles, 84
social father versus genetic father, 84–86
unwed biological fathers, 79–80, 86, 87–88
gender identity in, transsexuals and, 78, 104–105
generic testing in, 80

Gewalthutzgsetz (Protection against Violence Act), 91
Grundgesetz (Basic Law)
overview, 77, 78
autonomy under, 102–103
child endangerment under, 91, 92–93
divorce under, 95
ECHR and, 80, 86, 87–88
marriage under, 95
personality under, 80–81
rights of children under, 93–94
social father versus genetic father under, 84
transsexuals under, 104–105
human rights in
overview, 81
autonomy and, 15–16
children born out of wedlock and, 78
same-sex marriage and, 79
transsexuals and, 78
unwed biological fathers and, 79–80
maintenance in
overview, 12, 97
after separation, 100–101
“community of accrued interests,” 97–98
criticisms of, 98–99
during marriage, 99–100
pension rights, 97
marriage in
overview, 95
same-sex marriage, 96, 103
Ministry of Family Affairs, Senior Citizens, Women and Youth, 98
motherhood in birthmother dogma, 82–83
co-mothers, 83–84
by sperm donation, 83–84
Nichthehelichengesetz (Law of the Status of Children Born out of Wedlock), 78
parenthood in
overview, 95
as status, 82
pre-nuptial agreements in, 103–104
rights of children in, 93–94
role of children in legal proceedings, 94
same-sex marriage in, 79, 96, 103
transsexuals in, 78, 104–105
Transsexuellengesetz (Act on Transsexuals), 104
Glennon, Theresa, 11–12, 13, 14, 18
<table>
<thead>
<tr>
<th>Index</th>
<th>287</th>
</tr>
</thead>
</table>

| Hallaq, Wael, 260–261, 265, 273–274 |
| Heiderhoff, Bettina, 3, 12, 15–16 |
| Hetherington, David, 118 |
| Homosexuals. See Civil partnerships or unions; Same-sex marriage |
| Human rights in Germany, overview, 81 |
| autonomy and, 15–16 |
| children born out of wedlock and, 78 |
| same-sex marriage and, 79 |
| transsexuals and, 78 |
| unwed biological fathers and, 79–80 |
| Islamic family law and, 255–256 |
| in Latin America, 130 |
| Hunter, Rosemary, 3, 6, 8–9, 10, 12–13, 14, 123 |
| India, overview, 226–227 |
| adoption in |
| Datta homa (invocation ceremony), 230–231 |
| neglected and abused children, 230 |
| under personal laws, 230–231 |
| All India Muslim Women’s Personal Law Board, 243 |
| autonomy in |
| group autonomy, 245–247 |
| personal laws and, 234 |
| religious ADR and, 239, 245–247 |
| Awaz-e-Miswan, 243 |
| Bharatiya Janata Party, 238 |
| Bharatiya Muslim Mahila Aandolan, 243, 244 |
| Code of Criminal Procedure 1972, 229–230, 233 |
| Constitution, 237–239 |
| Dissolution of Muslim Marriage Act 1939, 276 |
| Family Courts Act 1984, 228 |
| gender in |
| personal laws, gender differences in, 227 |
| personal laws and, 236–237 |
| religious ADR and, 243–245 |
| general family laws in, 227–230, 233–236 |
| Guardians and Wards Act 1890, 230, 233 |
| Hindu Adoptions and Maintenance Act 1956, 230–231 |
| Hindu Marriage Act 1955, 231 |
| Indian Succession Act 1925, 228, 229, 233 |
| Islamic family law in, 232, 234–235, 236, 238–239, 243 |
| Juvenile Justice (Care and Protection of Children) Act 2000, 230, 233 |
| marriage in |
| Datta homa (invocation ceremony), 231 |
| under general family laws, 227–230 |
| under personal laws, 231 |
| Saptapadi (seven steps ceremony), 231 |
| solemnization, difficulties in, 229 |
| Muslim Women Act, 229–230 |
| Parsis in, 226, 229, 240 |
| personal laws in |
| adoption under, 230–231 |
| autonomy and, 234 |
| Buddhists under, 231–232 |
| chart, 249–252 |
| Constitution versus, 237–239 |
| distortion of religious traditions in, 226 |
| freedom of choice under, 234–235 |
| gender and, 236–237 |
| gender differences in, 227 |
| general family laws versus, 227–230, 231–236 |
| historical background, 225–226 |
| intra-group religious diversity, insensitivity to, 232–233 |
| Jains under, 231–232 |
| marriage under, 231 |
| misrecognition under, 247–252 |
| nonrecognition under, 247–252 |
| opting out of, 227–230, 233 |
| outside of family law context, 226 |
| “personal law groups,” 227 |
| problems with, 233, 247–252 |
| Sikhs under, 231–232 |
| religion in |
| application of rules, 5–6 |
| assignment of, 2–3 |
| coercion regarding, 235–236 |
| general versus specific rules, 5–6 |
| overlap with family law, 4 |
| religious ADR in |
| overview, 7–8, 239–241 |
| autonomy and, 239, 245–247 |
| criticism of, 243–244 |
| religious identity and, 241–242 |
| women and, 243–245 |
| Special Marriage Act 1954, 228–229 |
| women in |
| personal laws and, 236–237 |
| religious ADR and, 243–245 |
Index

Industrial Revolution, 206

Inheritance rights
- in Islamic family law, 262
- in South Africa
  - cohabitation and, 190–191, 192–197
  - of same-sex couples, 190–191, 192–197

Institute for Future Studies, 158

Intersex children. See also Gender identity
- in Colombia, 141–142
- in Latin America, 3–4

Iraq
- Code of 1951, 272
- Code of Personal Status of 1959, 276
- Sunni-Shia conflict in, 272

Islamic family law. See also specific country overview, 254–258
- child custody in, 266–267
- child support in, 267
- as colonial fabrication, 270–271
- colonialism, impact of, 270–271
- constitutional norms and, 255–256
- divorce or dissolution in judicial decree, 264
  - *khul* (mutual agreement), 264, 265
  - *talaq* (unilateral repudiation), 264–265
- eclecticism in, 271–272
- England and Wales, Sharia Councils in, 26–28
- factors influencing development of, 259–260
  - *fatwas* (legal opinions), 269–270
  - halaqas (circles of learning), 269
  - Hanafi Madhab, 259
- Hanafi School, 271–273, 275–276
- human rights and, 255–256
- in India, 232, 234–235, 236, 238–239, 243
- inheritance rights in, 262
- madrasas (colleges), 269
- *mahr* (dower), 262, 263
- maintenance in, 262
- Maliki School, 272–273, 276
- marriage in
  - capacity of parties, 261–262
  - contractual nature of, 260–261, 263
  - registration of, 278–279
  - temporary marriage, 263–264
  - transient bar to, 262
- modernization of, 273–274
- moral versus legal aspects, 278
- *muftis* (scholars), 269–270
- nation-states, emergence of, 271
- paternity in overview, 265
- illegitimacy and, 266
- presumptions regarding, 265–266
- post-colonial legislative reforms, 274–277
- qadis (judges), 269–270
- religious ADR in, 8
- religious versus legal aspects, 278
- Shafi’i School, 272–273
- *sharia*
  - community consensus regarding, 257
  - departure from, 274–275
  - historical background, 268–270
  - interaction with state law, 254, 259, 277–278
  - misconceptions of, 267–268, 279
  - as normative system, 255, 258
  - persistence of, 258–259
  - problems with codification of, 256
  - state enforcement of, problems with, 6, 257–258, 275
- state law
  - European model, 273
  - interaction with *sharia*, 254, 259, 277–278
  - selectivity of, 256–257
- Sunni-Shia conflict in, 272
- Italy, Sweden compared, 178

Jordan
- Law of Family Rights of 1951, 276
- Law of Personal Status of 1976, 276

Kapoor, C., 229

Keidan, Charles, 21

Kuwait, Code and Commercial Law of 1960, 272

Lathrop Gómez, Fabiola, 3–4, 15, 18

Latin America. See also specific country
- overview, 128–129, 156
- assistive reproductive technologies (ARTs) in, 130–131
- autonomy in, 15
- biological parenthood, departure from, 130–131
- broad model of family in, 179–278
- child-rearing in, 132
- children’s rights in, 18
- constitutional courts in, 133–134
Index

constitutionalisation of family law in,
128–129, 156–157
emerging jurisprudence of family law in,
129–132
England and Wales compared, 130–131
equalisation of gender roles in, 3
filiation by birth in, 145
gender identity in overview, 141
intersex children, 3–4
human rights in, 130
intermediate model of family in, 129
international human rights law and, 130
judicial decisions, precedential value of, 133
marriage in, 135
neo-constitutionalisation in, 133–134
restrictive model of family in, 129
rights of children in, 131–132
same-sex marriage in, 135
Lawyers
Australia, role in property division in,
123–124
challenges facing, 1–2
Lebanon, Sunni-Shia conflict in, 272
Leviner, Pernilla, 3, 11, 15
LGBT persons
civil partnerships or unions (See Civil partnerships or unions)
same-sex marriage (See Same-sex marriage)
South Africa, same-sex couples in “choice argument” and, 189–190
heterosexual couples versus, 188–190, 191, 197–198
inheritance rights of, 190–191, 192–197
marriage, 182, 190
Libya, Code of 1954, 272
Louv, Anne, 6–7, 10
Low, Hamish, 114–115, 117
Maintenance. See Alimony or maintenance
Marriage
in Argentina, 135, 137–138
in Brazil, 135, 138–139
in Chile, 139–141
cohabitation versus, 9–10
in Colombia, 135–136
divorce, effect of, 10
in England and Wales overview, 19–20
forced marriage, 34–36
formalities of, 24–26
“non-marriage,” 25–26
pre-nuptial agreements, 42–44
Sharia Councils, 26–28
in Germany overview, 95
same-sex marriage, 96, 103
in India
datta homa (invocation ceremony), 231
under general family laws, 227–230
under personal laws, 231
saptapadi (seven steps ceremony), 231
solemnization, difficulties in, 229
in Islamic family law
capacity of parties, 261–262
contractual nature of, 260–261, 263
registration of, 278–279
temporary marriage, 263–264
transient bar to, 262
in Latin America, 135
in Mexico, 135, 138
nature of institution, 10
parenthood, effect of decline on, 17
in South Africa
access to, 9
“choice argument” and, 189–190
civil unions in hierarchy of marital relations, 197–198
civil unions versus, 10
cohabitation in hierarchy of marital relations, 200–201
conscientious objection clause, 198
custodial marriage in hierarchy of marital relations, 198–199
minimum age, 198
non-married persons versus, 181
pluralism, criticism of, 182–184
recommendations regarding, 201–202
religious marriages, 199, 200
same-sex marriage, 182, 190
in Sweden
alternatives to, 11
preference for, 175–176
in Uruguay, 135
in US
access to, 9
changing demographics, 51
diminishing financial support from, 55, 58–59
discouragement of, 11
inter-spousal contracts, 61
Marriage (cont.)
on-marital relationships, 57–58
restrictions on, 57
same-sex marriage, 57, 65
Merkel, Angela, 79
Mexico
Constitution, 134
constitutionalisation of family law in, 134
Federal Civil Code, 134
Federal District Civil Code, 144
Federal District Code of Civil Procedure, 144
filiation by birth in, 147–149
gender identity, sexual ambiguity, 143–144
marriage in, 135, 138
same-sex marriage in, 138
Meyerson, D., 199–200
Mill, John Stuart, 235–236
Morocco, Code of Personal Status of 1958, 276

On Liberty [Mill], 235–236
Ottoman Empire
colonialism and, 275
Law of Family Rights, 276
Majallah, 271–272, 275–276

Pakistan, Sunni-Shia conflict in, 272
Parent-child relationship
China, continuation in, 208
in US
overview, 62–63
assistive reproductive technologies [ARTs] and, 65–66
broadening base of, 63–66
in loco parentis, 65
non-marital parents, 63–65
presumption of, 63
in same-sex marriage, 65
state intrusion into, 66
unwed fathers, 63–65

Parenthood
genetic testing and, 17
in Germany
birthmother dogma, 82–83
co-mothers, 83–84
genetic testing and, 17
by sperm donation, 83–84
as status, 82
marriage, effect of decline of, 17
paternity (See Paternity)

relational definition of, 17–18
in Sweden
-genetic parenthood preference, 176
-genetic testing, 167–168
guardianship versus, 169–170
involuntarily childless persons, 176–177
-nuclear family preference, 170
-number of parents, 168–169
-presumptions, 167–168
-registration requirement, 166–167, 168
-same-sex couples, 168
“twoness” preference, 168–169, 175, 176

Parkinson, Patrick, 112

Paternity
in Germany
mixed principles, 84
-social father versus genetic father, 84–86
-unwed biological fathers, 79–80, 86, 87–88
in Islamic family law
overview, 265
-illegitimacy and, 266
-presumptions regarding, 265–266

Pre-nuptial agreements
in England and Wales, 42–44
-feminist critique of, 43
-in Germany, 103–104
-in South Africa, 181
-in US, 59–61

Privacy in US
overview, 55
-abortion, 56
-constitutional protection, 56
-contraception, 56
-historical background, 55–56
-same-sex marriage, 57
-sexual relations, 56–57

Property division
in Australia
overview, 12
-adjudicated cases, 124–126
-contributions versus need, 110–111, 118
-de facto financial disputes, 125
definition of property, 109–110
diversity in, 126
-factors affecting, 120–121
-fairness, perception of, 122–123
high-asset versus moderate-asset cases, 125
informal agreements, 119–122
judicial discretion, 110
lawyers, role of, 123–124
separate property regime, 109–110
statistics, 119
uncertainty in, 126
in England and Wales
overview, 28
cohabitation and, 31–33
rules versus discretion, 28–31
uncertainty in, 29–31
women allegedly favoured by, 29–31
in South Africa
in customary marriage, 184–188
“family property,” 187
“house property,” 187
Qu, Lixia, 119–121, 122
Religion
in England and Wales
freedom of choice, 6
overlap with family law, 4
in India
application of rules, 5–6
assignment of, 2–3
coercion regarding, 235–236
general versus specific rules, 5–6
overlap with family law, 4
Islamic family law (See Islamic family law)
overlap with family law, 4–5
religious ADR (See Religious ADR)
in South Africa
“religion free zone,” family law as, 6–7
religious marriages, 199, 200
Religious ADR
in Canada, 8, 244
in India
overview, 7–8, 239–241
autonomy and, 239, 245–247
criticism of, 243–244
religious identity and, 241–242
women and, 243–245
in Islamic family law, 8
Rhoades, Helen, 125
Same-sex marriage
in Argentina, 137–138
in Brazil, 138–139
in Chile, 139–141
in Colombia, 135–136
in Germany, 79, 103
in Latin America, 135
in Mexico, 138
in South Africa, 182, 190
in US, 57, 65
al-Sanhuri, Abd al-Razzaq, 272
Sarmas, Lisa, 3, 12, 16
Saudi Arabia, Sunni-Shia conflict in, 272
Shi, David, 14, 18
Singer, Anna, 170, 178
Smith, B.S., 196
Smith, Warwick, 118
Solanki, Gopika, 240
in South Africa
overview, 180–181, 200–202
Children’s Act of 2005, 200
civil unions in
overview, 182
defined, 197–198
in hierarchy of marital relations, 197–198
marriage versus, 10
cohabitation in
in hierarchy of marital relations, 200–201
inheritance rights and, 190–191, 192–197
Constitution, 180, 185–186
Constitutional Court, 180
custodial marriage in
overview, 188
criticism of, 182–184
dissolution of, 183
in hierarchy of marital relations, 198–199
property division, 184–188
recognition of, 181–182
Divorce Act of 1979, 181, 183
Domestic Partnerships Bill (proposed), 200–201
duty of support in, 194–195
inheritance rights in
cohabitation and, 190–191, 192–197
of same-sex couples, 190–191, 192–197
Judges Remuneration and Conditions of Employment Act of 1989, 189
lobolo (bridewealth), 183–184, 199
Index

South Africa (cont.)
- Maintenance of Surviving Spouses’ Act of 1990, 181, 189
- Marriage Act of 1961, 181, 197–198, 201
- marriage in access to, 9
  - “choice argument” and, 189–190
  - civil unions in hierarchy of marital relations, 197–198
  - civil unions versus, 10
  - cohabitation in hierarchy of marital relations, 200–201
  - conscientious objection clause, 198
  - customary marriage in hierarchy of marital relations, 198–199
  - minimum age, 198
  - non-married persons versus, 181
  - pluralism, criticism of, 182–184
  - recommendations regarding, 201–202
  - religious marriages, 199, 200
  - same-sex marriage, 182, 190
- Matrimonial Property Act of 1984, 181
- Muslim Marriages Bill (proposed), 200
- polygyny in
  - criticism of, 182–184
  - property division and, 184–188
  - recognition of, 181–182
- pre-nuptial agreements in, 181
- property division in
  - customary marriage, 184–188
  - “family property,” 187
  - “house property,” 187
- religion in
  - “religion free zone,” family law as, 6–7
  - religious marriages, 199, 200
- same-sex couples in
  - “choice argument” and, 189–190
  - heterosexual couples versus, 188–190, 191, 197–198
  - inheritance rights of, 190–191, 192–197
  - marriage, 182, 190
- separation of powers in, 180
- sexual orientation discrimination, prohibition against, 182
- Wills Act of 1953, 199
- Steinfeld, Rebecca, 21
- Sudan, Sunni-Shia conflict in, 272–273
- Surrogacy in Sweden, 165, 174, 177
- Sweden overview, 161–162
- adoption in, 173–174
- assistive reproductive technologies (ARTs) in attempt to conceive as prerequisite, 165–166
- England and Wales compared, 174–175
- gamete donation, 163–164
- reluctance to embrace, 174–175
- restrictions on, 165–166
- surrogacy, 165, 174, 177
- US compared, 174–175
- womb transplantation, 177
- Australia compared, 159
- autonomy in, 15
- Care of Young Persons Act, 159, 172
- child care in, equalisation of gender roles, 3
- child protection system in overview, 159
- extra-familial placement, 171–172
- as family and service-oriented system, 159–160, 171
- out-of-home care placement, 171–172
- reunification, preference for, 171–174
- risk assessments, 172
- state intervention, 171
- Children and Parents Code, 163, 165, 172, 175–176
- England and Wales compared, 159
- formation of family in overview, 162
- right to parenthood, 163
- Genetic Integrity Act, 160, 163–164
- genetic testing in, 167–168
- Italy compared, 178
- marriage in alternatives to, 11
- preference for, 175–176
- nuclear family versus openness in overview, 161
- genetic parenthood preference, 176
- marriage preference, 175–176
- parenthood, nuclear family preference in, 170
- “reproduction” of nuclear family, 177–179
- romantic love and, 175
- “twoness” preference, 175, 176
- parenthood in genetic parenthood preference, 176
- genetic testing, 167–168
guardianship versus, 169–170
involuntarily childless persons, 176–177
nuclear family preference, 170
number of parents, 168–169
presumptions, 167–168
registration requirement, 166–167, 168
same-sex couples, 168
“twoness” preference, 168–169, 175–176
progressive policies and attitudes in, 158–159
Social Services Act, 159
state control versus individualism in, 160–161
“Swedish state individualism,” 160, 174
US compared, 159, 178
welfare system in, 159, 174
Syria
Law of Personal Status of 1953, 276
Sunni-Shia conflict in, 272
Taylor, Charles, 247–248
Technological developments, 1
Thompson, Sharon, 40, 43
The Three Worlds of Welfare Capitalism (Esping-Andersen), 159
Trädgårdh, Lars, 160
Transgendered persons. See Gender identity
Transsexuals in Germany, 78, 104–105
Tunisia, Law of Personal Status of 1956, 276
Turbulence in family law, 1–2
United Kingdom. See England and Wales
United States
overview, 48–50, 74–75
alimony, decline in, 11–12
alimony in, 11–12
assisted reproductive technologies (ARTs) in
overview, 65–66
Sweden compared, 174–175
autonomy in
overview, 13
contracts and, 62
increases in, 48–50
changing family demographics in
overview, 50–51
cohabitation, 52
divorce, 52
employment, 53–54
family complexity, 52–53
financial insecurity, 54–55
marriage, 51
multi-partner fertility, 52–53
child custody in
gender-based presumptions, 67
historical background, 66–67
shared custody, 67–68
child support in
filial responsibility statutes, 69–70
financial burdens of, 69
financial inequality and, 70–71
freedom of choice, 68–69
cohabitation in
changing demographics, 52
contracts, use of, 61–62
contracts, use of autonomy and, 62
cohabitation, 61–62
inter-spousal contracts, 61
pre-marital agreements, 59–61
divorce in
alimony, decline in, 11–12, 58–59
changing demographics, 52
Due Process Clause, 56
Earned Income Tax Credit (EITC), 73, 74
filial responsibility statutes, 69–70
financial inequality in
overview, 48–50, 71
changing demographics, 54–55
child support and, 70–71
diminishing financial support from
marriage, 58–59
employment and, 71–73
public benefits and, 73–74
Fourteenth Amendment, 56, 57
gender-based presumptions in child
custody, 67
marriage in
access to, 9
changing demographics, 51
diminishing financial support from, 55, 58–59
discouragement of, 11
inter-spousal contracts, 61
non-marital relationships, 57–58
restrictions on, 57
same-sex marriage, 57, 65
Massachusetts, alimony in, 58–59
parent-child relationship in
overview, 62–63
United States (cont.)
assistive reproductive technologies (ARTs) and, 65–66
broadening base of, 63–66
in loco parentis, 65
non-marital parents, 63–65
presumption of, 63
in same-sex marriage, 65
state intrusion into, 66
unwed fathers, 63–65
pre-marital agreements in, 59–61
privacy in
overview, 55
abortion, 56
constitutional protection, 56
contraception, 56
historical background, 55–56
same-sex marriage, 57
sexual relations, 56–57
same-sex marriage, 57, 65
Social Security, 57, 73–74
Sweden compared, 159, 178
Temporary Assistance for Needy Families (TANF), 73–74

Texas, alimony in, 58–59
Uruguay, marriage in, 135

Violence. See Domestic violence

Wade, John, 123
Wales. See England and Wales
Womb transplantation in Sweden, 177

Women. See also Gender
Australia, effects of divorce on women in, 114–118
changing social status of, 1
in China, 206
discrimination against, 2–3
in England and Wales
expansion of rights, 206
property division allegedly favouring, 29–31
in India
personal laws and, 236–237
religious ADR and, 243–245
Latin America, equalisation of gender roles in, 3