Detail Contents

Abc	out the	Editor	page xv
Lis	t of Co	ntributors	xvii
Pre	Introduction Joel A. Nichols Multi-Tiered Marriage: Reconsidering the Boundaries of Civil Law and Religion Joel A. Nichols 1. Introduction 11. A Short History of Marriage and Divorce Law Jurisdiction 111. Domestic Movement Toward Multi-Tiered Marriage A. Covenant Marriage Laws (Louisiana, Arkansas, and Arizona) B. New York's Get Statutes 1V. International Models A. India B. Kenya C. South Africa D. Canada V. Conclusion	xix	
Per	mission	es	xxiii
			I
1.			
••			11
		9	
	I.	Introduction	11
	11.	A Short History of Marriage and Divorce Law Jurisdiction	15
	III.	Domestic Movement Toward Multi-Tiered Marriage	19
		A. Covenant Marriage Laws (Louisiana, Arkansas, and	
		Arizona)	20
			23
	IV.		32
			33
		•	44
		·	49
			55
	V.	Conclusion	58
2.		- _ -	60
			e
			61
	11.	Four Alternative Paths to Pluralism and Decentralization	64

		A. Delegation	64
		B. Individual Contracts	65
		C. Menus of Options	66
		D. Choice of Law	66
	Ш.	Interests in Uniformity	67
		The Nature of Marriage and the Role of the State	68
	V.	Limits?	71
	VI.	Government Interactions with Religion	73
	VII.	Constitutional Issues	75
	VIII.	Conclusion	76
}.	Mari	iage and the Law: Time for a Divorce?	78
	Stepl	nen B. Presser	
	I.	A Roiling Political Issue	78
	11.	The Uneasy Relationship of the Civil Law to Marriage	81
		A. The English Common Law	81
		B. Colonial, Early Republican, and Nineteenth-Century	
		America	82
	111.	Where We Are Now	84
		A. The Right to Privacy	84
		B. The "Mystery Passage"	86
		C. "Landmarkism?"	87
		D. The Future	88
	IV.	Conclusion	91
ţ.		fficial Family Law	92
	Ann	Laquer Estin	
	١.	Marriage Celebration: Convergence and Incorporation	98
		A. Marriage Celebrations	98
		B. The Interaction of Religious and Civil Law	100
	11.	Divorce Law: Conflict and Accommodation	102
		A. Legislative Responses to Religious Diversity	105
		B. Consent, Dissent, and Exit	109
	III.	Marriage Norms: Prohibitions and Gatekeeping	112
		A. The Catekeeping Function of Marriage Law	112
	** *	B. Families Underground	115
	IV.	Conclusion	117
5.	Cove	enant Marriage Laws: A Model for Compromise	120
	Kath	erine Shaw Spaht	

	1.	What is Covenant Marriage?	120
		A. Premarital Counseling	122
		B. Declaration of Intent	123
		C. Restricted Grounds for Divorce	124
	H.	Why Covenant Marriage Statutes?	126
		A. Covenant Marriage Emphasizes Strengthening	
		Marriage, Not Merely Preventing Divorce	126
		B. Covenant Marriage Legislation Combines Components	
		Appealing to Political Conservatives and Liberals	128
		C. Covenant Marriage Invites Religion Back Into the	
		Public Square to Assist in Serving a Public Whose	
		Need is to Preserve Marriages	128
		D. Covenant Marriage Seeks to Persuade, Not Coerce, Citizens	
		to Elect a Stronger Commitment to Marriage	129
		E. Covenant Marriage Offers Traditional Communities a	
		Refuge from the Broader Postmodern Culture	129
		F. Covenant Marriage Offers the Promise of Surviving	
		Migratory Divorce	130
	III.	Marriage - and "Civil Marriage" and "Religious Marriage"	131
	IV.	Why Not Other Options?	134
	V.	Conclusion	136
6.	New	York's Regulation of Jewish Marriage: Covenant,	
		tract, or Statute?	138
		aael J. Broyde	
	I.	•	138
	11.	Jewish Marriage Laws: Movement from Contract to	
		Covenant	140
	III.	Jewish Marriage Contracts and American Law	144
		A. The Enforceability of the Ketubah as a Contract	145
		B. Rabbinic Arbitration Agreements to Construct Jewish	•
		Marriages	146
		C. The New York State Jewish Divorce Laws	148
	IV.	Jewish Marriage and Divorce in Practice in New York	154
		A. Prenuptial Agreements	156
		B. New York's Get Statutes	158
		C. Opting Out of the Secular Legal System	161
	V.		161
	VI.	Conclusion: The Problem of Obeying Two Legal	
		Systems	162

	Polit	ical Liberalism, Islamic Family Law, and Family Law	
	Plura	alism	164
	Moh	ammad H. Fadel	
	1.	Family Law Pluralism and Political Liberalism	167
	II.	The Relationship of Islamic Law to Islamic Ethics	170
	Ш.	The Scope of Islamic Family Law and its Relationship to	
		Islamic Ethics	173
	IV.	Islam and Family Law Pluralism	175
		A. Intra-Islamic Legal Pluralism and Islamic Family Law	175
		B. The Contractual Nature of Islamic Family Law	178
		C. Religious Regulation of the Family in Islam	180
		D. Marriages of Non-Muslims and Islamic Family Law	184
		F. Conclusion	185
	V.	The Attractiveness of a Politically Liberal Family Law to	
		Muslims	185
	VI.	Family Law Arbitration, Religious Law, and Public Policy:	
		The Case of New York	193
	VII.	Conclusion	196
8.	Mul	ti-Tiered Marriages in South Africa	200
	Johan	n D. van der Vyver	
	١.	Basic Principles of the South African Law of Husband and	
		Wife	202
	11.	Legalization of Customary African Marriages	203
	Ш.	Applying Principles of Contract to Some Marriages Not	
		Recognized Under South African Law	209
	IV.	Same-Sex Marriages	213
	V.	Imposing Principles of Equity and Justice from the Top	
		Down	216
9.	Anci	ent and Modern Boundary Crossings Between Personal Laws	
		Civil Law in Composite India	219
		ner Menski	·
	1.	Introduction: The Realities of Pluralism	219
	11.	Ancient Roots of Pluralism and Boundary Crossing	225
	Ш.		231
	IV.	The Tortuous Agenda of Legal Uniformity in Indian Law	233
	V.	Postmodern Indian and Hindu Marriage Law	238
	VI.	Post-Divorce Maintenance Laws, the Indian Constitution,	-
		and Hindu Legal Concepts	244
	VII.	Conclusion	249

D		
Detail	Co	ntents

xiii

	7C)	D. 21. (10 %) P. 1 M. 1	
10.		Perils of Privatized Marriage n Fretwell Wilson	253
	Robi		
	1.	Lived Experiences	257
		A. Faith-Healing Communities in the United States B. Family Law in Western Thrace	258
		· · · · · · · · · · · · · · · · · · ·	261 - 6
		C. Controversy Over Shari'a Courts in Great Britain	264
	II.	D. Summary Reasons for Caution	268
	11.	A. Domestic Violence	268
			269
		B. Child Physical Abuse and Corporal Punishment	271
		C. Child Sexual Abuse	² 73
	111	D. Summary	2 73
	III. IV.	Tolerance of Family Violence	² 74
	IV.	, , , , , , , , , , , , , , , , , , ,	
	V.	Inequities?	279 - 0-
	VI.		281
	V 1.	Conclusion	283
11.	Canadian Conjugal Mosaic: From Multiculturalism to Multi-		
		ugalism?	284
	Dani	el Cere	
	1.	, , , ,	285
	11.		293
	III.	Conclusion	306
12.	Mari	iage Pluralism in the United States: On Civil and Religious	
		diction and the Demands of Equal Citizenship	309
		a C. McClain	J- /
	I.	Introduction: The Call for More Pluralism and Shared	
		Jurisdiction in U.S. Family Law	309
	11.	Whither the Demand for More Marriage Pluralism in the	, ,
		United States?	312
		A. An Initial Question: Should Religious and Civil Family	
		Law Be Congruent?	312
		B. Tensions Between Civil and Religious Law: Gender Roles	
		and Gender Equality	318
	111.	Pluralism in U.S. Family Law: Jurisdiction, Location, and	-
		Citizenship	320
		A. Religious Marriage Contracts, Religious Arbitration, and	
		the Get Statutes	322
		B. Adjudication of Islamic Marriage Contracts: The Mahr	3 ² 3

		C. Resolving Conflicts Between Civil and Religious Divorce	
		Law: Two Contrasting Cases	326
	IV.	International Models?	329
		A. Assessing Multi-Tiered Marriage Through a Gender	
		Equality Lens	329
		B. Canada: Membership and Citizenship in Ontario's Faith-	
		Based Arbitration Controversy	331
	V.	Conclusion	339
13.	Faitl	n in Law? Diffusing Tensions Between Diversity and Equality	341
	Ayele	rt Shachar	
	1.	Privatized Diversity	343
	11.	The Predicament Facing Vulnerable Members of Religious	
		Communities	346
	Ш.	Forging a New Path	349
	IV.	Regulated Interaction	351
	V.	Conclusion	356
4.	The	Frontiers of Marital Pluralism: An Afterword	357
	John	Witte Jr. and Joel A. Nichols	
	I.	Introduction	357
	П.	The Evolution of the (Western) Law of Marriage	361
	III.	Religion, Family, and the State	364
		A. The Case for Shari'a Councils	366
		B. The Case Against Shari'a Councils	367
		C. Lessons and Analogies	370
	IV.	First Amendment Considerations	373
nde	2X		379