

RECONSTRUCTING GENDER EQUALITY IN FAMILY LAW: A NORMATIVE AND COMPARATIVE ANALYSIS OF EUROPEAN FAMILY LAW SYSTEMS IN RELIGIOUS CONTEXTS

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Received 16-08-2024 | Revised 28-12-2024, 26-03-2025, 15-06-2025, 15-07-2025 | Accepted 28-08-2025

Abstrak: Penelitian ini bertujuan menganalisis fondasi normatif dan doktrinal kesetaraan gender dalam hukum keluarga Eropa serta mengkaji bagaimana warisan keagamaan Kristen dan Islam terus memengaruhi konstruksi hukum kontemporer. Dengan menggunakan pendekatan multi-metode yang mencakup analisis hukum normatif, perbandingan lintas-yurisdiksi, dan kajian kualitatif atas peraturan, putusan pengadilan, serta literatur akademik, studi ini menilai mekanisme hukum yang membentuk relasi gender melalui lensa teori gender kritis, analisis interseksional, dan etika keagamaan. Hasilnya menunjukkan divergensi signifikan pada rezim harta perkawinan, mekanisme valuasi kerja perawatan, dan prinsip perceraian. Meskipun kesetaraan formal diakui secara luas, kesenjangan substantif tetap bertahan akibat undervaluation kerja domestik, tegangan antara prinsip otonomi dan kompensasi, serta keberadaan “kriptotipe” sosial yang berakar pada tradisi keagamaan dan budaya. Kajian ini menemukan bahwa warisan Kristen dan Islam memainkan peran ambivalen: di satu sisi mempertahankan norma patriarkal, tetapi di sisi lain menyediakan ruang bagi reinterpretasi internal yang lebih egaliter. Temuan ini menegaskan bahwa sistem hukum keluarga Eropa memang bergerak menuju harmonisasi dengan standar HAM, namun efektivitasnya terhambat oleh inkonsistensi doktrinal dan bias implisit. Studi ini mengusulkan model hukum keluarga yang direkonstruksi dengan memasukkan valuasi adil atas kontribusi non-finansial, yurisprudensi sensitif gender, pengawasan lebih kuat terhadap lembaga peradilan keagamaan, serta pelatihan yudisial berbasis perspektif gender. Penelitian ini berkontribusi pada pemahaman konseptual mengenai bagaimana hukum keluarga dapat direformasi untuk mewujudkan kesetaraan substantif dalam konteks keberagaman Eropa..

Kata kunci: kekerasan dalam rumah tangga, perlindungan hak-hak keluarga, kesetaraan gender, Konvensi Eropa.

Abstract: This study examines the normative and doctrinal foundations of gender equality in European family law and investigates how Christian and Islamic religious heritage continues to shape contemporary legal interpretations and outcomes. Using a multi-method design combining normative legal analysis, cross-jurisdictional comparison, and qualitative assessment of statutory frameworks, case law, and scholarly literature, the study evaluates legal mechanisms regulating gender relations through the lenses of critical gender theory, intersectional analysis, and religious ethics. The findings reveal marked divergences in matrimonial property regimes, valuation of care work, and principles governing divorce. Despite widespread recognition of formal equality, substantive inequalities remain embedded due to the undervaluation of domestic labor, tensions between autonomy and compensation principles, and the persistence of cultural “cryptotypes” rooted in religious and historical traditions. The analysis demonstrates

that Christian and Islamic heritages exert dual influences: they reinforce patriarchal norms while simultaneously offering internal interpretive pathways for gender-progressive reform. The results underscore that, although European family law systems show increasing convergence toward human rights standards, doctrinal inconsistencies and implicit judicial biases continue to limit equitable outcomes. The study proposes a reconstructed model of family law incorporating gender-sensitive jurisprudence, equitable valuation of non-financial contributions, stronger regulation of religious adjudicatory bodies, and gender-responsive judicial training. This research contributes conceptual clarity and policy-relevant insights into how family law can be restructured to advance substantive gender equality within Europe's diverse socio-legal contexts.

Keywords: domestic violence, protection of family rights, gender equality, European Convention.

INTRODUCTION

European family law is currently undergoing a profound transformation, adapting to dynamic societal shifts, rapid technological advancements, and the increasing diversification of family structures.¹ This evolution necessitates a continuous re-evaluation of legal frameworks to ensure inclusivity and justice for all individuals within evolving familial units, moving beyond traditional notions of the family.² The historical trajectory of family law, from its Roman origins to the present day, reveals a consistent process of adaptation in response to demographic changes, technological progress, and persistent social inequalities. This historical perspective underscores the imperative for ongoing legal adjustments to ensure that family law remains a fundamental driver of justice and fairness across Europe.³

The continuous adaptation of family law to societal changes highlights an inherent lag in legal frameworks. Law often operates reactively, striving to catch up with evolving social realities. This reactive posture implies that the challenge extends beyond mere adaptation; it demands a proactive and inclusive approach to legal reform. The objective should be to cultivate a forward-looking legal apparatus, one that is not merely responsive to current exigencies but actively dismantles archaic norms and prejudices embedded within existing legal systems. This perspective suggests that legal reform is not a singular event but an ongoing process, requiring constant vigilance over societal transformations and a readiness to challenge entrenched biases.⁴

The concept of gender equality has been firmly established as a fundamental value within the European Union, supported by a robust regulatory framework that includes binding directives. The EU's approach to gender equality has evolved significantly, initially focusing on equal pay driven by economic considerations to prevent market distortions.⁵ Over time, this focus broadened into a comprehensive policy that integrates gender mainstreaming and addresses various forms of discrimination and violence. This

¹ *The Evolving Landscape of Family Law: Addressing Contemporary Issues* | *International Journal of Law Management & Humanities*, n.d., <https://ijlmh.com/paper/the-evolving-landscape-of-family-law-addressing-contemporary-issues/>. Fitri Al Kadumi et al., "The Reconstruction of Islamic Family Law in Indonesia: A Normative-Comparative Analysis of Gender Justice and Legal Modernity," *ASEAN Journal of Islamic Studies and Civilization (AJISC)* 1, no. 1 (2024): 1–19.

² *Reinterpreting Religious Texts on Gender Equality: The Perspective of Ahmad Syafii Maarif* | *JURIS (Jurnal Ilmiah Syariah)*, n.d., <https://ejournal.uinmybatusangkar.ac.id/ojs/index.php/Juris/article/view/10233>.

³ Layyin Mahfiana et al., "Influence of Religion and Culture on Women's Rights in Joint Property Settlements in Java, Indonesia," *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 25, no. 1 (2025): 117–38, <https://doi.org/10.18326/ijtihad.v25i1.117-138>.

⁴ Mahfiana et al., "Influence of Religion and Culture on Women's Rights in Joint Property Settlements in Java, Indonesia."

⁵ "Gender Equality in Research and Innovation - Research and Innovation," October 14, 2025.

progression signifies a substantive shift from a purely

de jure equal rights approach to a more encompassing vision that acknowledges and addresses the social construction of gender and underlying power asymmetries.⁶ Despite the presence of a well-established regulatory framework and a commitment to equal treatment, persistent gender inequalities and notable gaps and challenges remain within the European research and innovation system.⁷ This situation reveals a critical disjuncture between formal legal equality and the lived experience of substantive equality. The initial economic motivation behind the EU's push for equal pay, while progressive for its time, may have subtly influenced the continued prioritization of economic integration for women, sometimes at the expense of fully addressing broader social and cultural rights.⁸ This historical framing can contribute to the persistence of a market-centric perspective, where social policy interventions, even those promoting gender equality, are perceived as subordinate to fostering women's integration into the labor market rather than as intrinsic human rights imperatives.⁹

A fundamental tension exists at the heart of family law and policy: the increasing emphasis on individual autonomy often conflicts with the demands of caring for children and other family members. Individual autonomy prioritizes decisions made in one's own best interests, whereas decisions related to care are frequently made for the collective good of the family, potentially diverging from the caregiver's individual interests. This tension is particularly pronounced in contexts where economic self-sufficiency is highly valued, as caregiving responsibilities often constrain individual choice and interfere with paid employment. Furthermore, certain functional approaches to family law, while ostensibly designed to secure equal treatment for diverse relationships, can inadvertently undermine principles of family privacy and autonomy. This occurs by vesting judges with the power to define what constitutes a family, a process that can inadvertently reify traditional or heteronormative notions of family structures.¹⁰ This dynamic suggests that legal reforms, even those intended to be progressive, can have unintended consequences. Prioritizing individual economic independence, for instance, can disadvantage those who undertake significant caregiving responsibilities, often women. Similarly, judicial interpretations of "family" in functional terms, if influenced by traditional biases, can reinforce gender roles that may not align with contemporary societal values.¹¹

Beyond explicit legal provisions, the historical and ongoing influence of cultural and religious traditions profoundly shapes European legal systems, even in ostensibly secular contexts. The past of the European family continues to influence its present, marked by both enduring continuities and significant discontinuities. While Roman law and Germanic tribal customs contributed to early family structures, the advent of Christianity exerted the most profound influence, transforming earlier patterns of domestic life by weakening wider kinship groups and introducing new norms regarding

⁶ Katharine Baker, "Equality and Family Autonomy," *University of Pennsylvania Journal of Constitutional Law* 24, no. 2 (2022): 412.

⁷ "Family, Law, and Society: From Roman Law to the Present Day - SWPS University," <https://english.swps.pl/science-and-research/review-our-research-output/publications-in-english/33917-family-law-and-society-from-roman-law-to-the-present-day>.

⁸ Hjh Norhartijah binti Haji Puteh and Cecep Soleh Kurniawan, "Reforming Islamic Family Law in Southeast Asia: A Comparative Study of Indonesia, Malaysia, and Brunei Darussalam," *ASEAN Journal of Islamic Studies and Civilization (AJISC)* 2, no. 1 (2025): 1–25, <https://doi.org/10.62976/ajisc.v2i1.1367>.

⁹ *The History of the European Family*, with Internet Archive (New Haven: Yale University Press, 2001), http://archive.org/details/historyofeuropea0003unse_lj8y1.

¹⁰ Theodosios Tsivolos, *Law and Religious Cultural Heritage in Europe* (Springer International Publishing, 2014), <https://doi.org/10.1007/978-3-319-07932-5>.

¹¹ Francis Powers, "Religion and the Law," *Catholic University Law Review* 1, no. 3 (1951): 115–21.

marriage and family organization.¹² Europe's identity is characterized by a rich tapestry of cultural, linguistic, and religious diversity, where religious pluralism is intrinsically linked to the respective religious traditions of each country.¹³ Religious ideology and practice continue to exert influence, sometimes partially insulating certain aspects of family life from the pressures of major socio-economic changes. This influence is not merely historical but deeply embedded in the "legal bloodstream" of European societies.¹⁴ The enduring nature of religious influence suggests that simply declaring a state "secular" does not erase the embedded religious norms from its legal and societal fabric. This can create friction points where religious norms act as a conservative force, slowing down or resisting gender-egalitarian reforms, even when economic realities or human rights principles necessitate them. This pervasive influence requires explicit critical engagement to understand its full impact on contemporary family law.

Research Questions

1. How do diverse European legal systems (under civil law and imperative models) conceptualize and apply gender equality in spousal rights, property regimes, and familial responsibilities?
2. To what extent do the underlying philosophical and religious frameworks (Christian and Islamic heritage) within these systems influence the realization of substantive gender equality?
3. What key doctrinal divergences and convergences exist in the treatment of gender roles and relational justice across selected European jurisdictions?
4. How can a reconstructed model of family law balance individual autonomy with structural protections to promote fairness, inclusivity, and gender-sensitive jurisprudence, while critically engaging with the influence of religious traditions?

METHOD

The research employs a multi-faceted design to comprehensively analyze gender equality in European family law. This approach combines normative and comparative legal analysis with qualitative methods, supported by critical theoretical lenses.

This component involves a rigorous examination of legal principles, theories of justice, and gender theory to establish and assess ideal standards of equality. The analysis delves into the profound questions of justice and equality that arise at the intersection of individuals' private lives with modern notions of gender, sexuality, and family.¹⁵ It explores how legal frameworks can and should respond to evolving definitions of the family, protect the rights of children and parents, and ensure equal treatment for all individuals, including women community. This normative inquiry also considers how marriage equality might open progressive possibilities not only for nonmarital children but also for nonmarital adult relationships, challenging traditional legal priorities.¹⁶

The pursuit of ideal standards of equality through normative analysis often

¹² "Marriage Equality and Its Relationship to Family Law," *Harvard Law Review*, n.d., <https://harvardlawreview.org/forum/vol-129/marriage-equality-and-its-relationship-to-family-law/>.

¹³ *Wikipedia*, "Gender-critical feminism," https://en.wikipedia.org/w/index.php?title=Gender-critical_feminism&oldid=1323984901.

¹⁴ "Comparative Family Law," American University, <https://www.american.edu/wcl/impact/initiatives-programs/gender/projects/family-law/>.

¹⁵ "Family Law 2025 | Global Practice Guides | Chambers and Partners," <https://practiceguides.chambers.com/practice-guides/family-law-2025>.

¹⁶ "Family Law, Sex and Society: A Comparative Study of Family Law," Routledge & CRC Press, <https://www.routledge.com/Family-Law-Sex-and-Society-A-Comparative-Study-of-Family-Law/DeCruz/p/book/9781859416389>.

reveals a significant gap between these ideals and the practical realities of legal application. While the aim is to identify what *should be*, observed legal systems still grapple with persistent inequalities. This disjuncture is further complicated by the fact that the "ideal" of gender equality itself is not monolithic; it is a contested concept, as evidenced by debates surrounding different feminist perspectives, including gender-critical feminism.¹⁷ This means that even the foundational normative standard can be subject to varying interpretations, adding complexity to the endeavor of achieving comprehensive equality.

This involves a systematic comparison of family law provisions, judicial interpretations, and scholarly discourse across selected European jurisdictions. At its core, comparative family law entails comparing legal systems that regulate intimate and family lives. This comparison serves a dual purpose: it informs discussions about similar or different institutional arrangements designed to address analogous legal problems globally, and it reveals the structural nature of law itself, prompting questions about the role of legal narratives in shaping state and societal structures.¹⁸ Comparative analysis is indispensable for understanding the diverse approaches to family law across different jurisdictions and is crucial for informing effective law reform efforts.

Engaging in comparative legal analysis requires moving beyond a surface-level identification of differences. It necessitates a deeper understanding of the "structural nature of law" and how "legal narratives about family law" actively shape society.¹⁹ This approach recognizes that family law is deeply intertwined with the moral, social, cultural, political, and religious beliefs of the society in which it operates.²⁰ While some might argue that these cultural constraints make meaningful comparison difficult, this very interconnectedness makes comparative analysis even more vital. By examining how legal ideas about marriage, parenthood, and family have "traveled" across different legal contexts, the study aims to understand how their meaning changes and the reasons behind their adoption or rejection. This suggests that any reconstructed model of family law cannot be a one-size-fits-all solution but must be adaptable to diverse cultural and religious contexts, acknowledging the unique historical and societal factors at play.

This study employs a qualitative approach, characterized by in-depth textual analysis. This involves a meticulous examination of primary legal sources, including relevant statutes, constitutional provisions, and significant judicial decisions (case law) pertaining to family law, spousal rights, property, and care. Complementing these primary sources, the analysis incorporates a wide range of secondary sources, such as academic articles, scholarly books, legal commentaries, and reports from influential international bodies like the Council of Europe and the European Court of Human Rights. Additionally, scholarly works on religious law and ethics relevant to family structures are critically reviewed to understand their pervasive influence.

Selection of European Legal Systems/Jurisdictions

For this comparative study, Germany, France, and the United Kingdom have been selected as key European jurisdictions. This selection is strategically justified by

¹⁷ Joachim Wagner, "Islamic Mediators Facilitate 'Two Legal Systems' in Germany," *International, Der Spiegel*, June 20, 2012, <https://www.spiegel.de/international/germany/islamic-mediators-facilitate-two-legal-systems-in-germany-a-839580.html>.

¹⁸ Martin Eidrup, "The Study of Muslim Family Norms in Contemporary Europe: A Systematic Scoping Review," *Oxford Journal of Law and Religion*, March 29, 2025, <https://doi.org/10.1093/ojlr/rwaf005>.

¹⁹ Jenn Selby, "How Can UK Law Help Islamic Sharia Councils Promote Gender Equality?," *EachOther*, March 27, 2019, <https://eachother.org.uk/how-can-uk-law-help-islamic-sharia-councils-promote-gender-equality/>.

²⁰ "Cover-Up: French Gender Equality and the Islamic Headscarf - Ideas | Institute for Advanced Study," June 26, 2015, <https://www.ias.edu/ideas/scott-cover-up>.

their distinct legal traditions, varying approaches to secularism, and diverse religious demographics, which collectively offer a rich landscape for analysis.

Germany: Represents a civil law system that has undergone significant reforms to its family law, moving towards greater gender equality. Its Basic Law (Grundgesetz) enshrines equality between women and men, reinforced by constitutional commitments and specific legislative changes concerning matrimonial property and parental responsibility. Germany also presents a compelling case study for contemporary interactions with Islamic communities, including the operation of parallel justice systems.²¹

France: Another prominent civil law system, France is characterized by a strong tradition of secularism (laïcité), which mandates a strict separation of religion from state affairs. Despite this secular stance, its family law has a historically patriarchal foundation and continues to navigate the complexities arising from its diverse religious populations, particularly significant Islamic communities, leading to ongoing debates on gender equality and religious practices.²²

United Kingdom: Provides a crucial common law perspective, distinct from the civil law tradition prevalent in Germany and France. The UK demonstrates an evolving approach to religious accommodation and possesses a significant multicultural and multi-religious population. It offers valuable insights into how common law adapts to gender equality challenges and the influence of religious minorities, notably through the operation of Sharia councils.²³

This selection enables a robust comparative analysis of legal traditions (civil vs. common law), diverse approaches to secularism (explicit separation vs. more accommodating models), and the influence of both Christian heritage (present in all three) and growing Islamic populations. The chosen jurisdictions have also undergone notable legal reforms in gender equality, providing varied pathways to reform. The distinct legal traditions and state-religion relationships in these countries lead to different manifestations of religious influence on family law. For instance, France's strict secularism can result in overt clashes over religious symbols, while the UK's common law and more accommodating stance may see the emergence of parallel religious justice systems. Germany's civil law system, underpinned by strong constitutional equality principles, may lead to direct legal challenges to patriarchal religious norms within religious communities.²⁴ This comparative approach allows for a deeper understanding of how these factors interact to shape gender equality outcomes in family law.

Data for this study is drawn from both primary and secondary sources to ensure a comprehensive and authoritative analysis. Primary sources include relevant national statutes, constitutional provisions, and significant judicial decisions (case law) from Germany, France, and the UK pertaining to family law, spousal rights, property regimes, and care responsibilities. Secondary sources encompass a broad range of academic literature, including scholarly articles, books, and legal commentaries. Additionally,

²¹ Guest Contributor, "How Did the German Church Become the Leaders of Catholic LGBTQ Equality?," *New Ways Ministry*, March 21, 2022, <https://www.newwaysministry.org/2022/03/21/how-did-the-german-church-become-the-leaders-of-catholic-lgbtq-equality/>.

²² Lukman Arake et al., "Non-Binary Gender in Siyasa Syar'iyah Perspective: Study at Religious Universities in South Sulawesi," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 7, no. 3 (2023): 1708–33, <https://doi.org/10.22373/sjhk.v7i3.20152>.

²³ Ute Gerhard, "Women's Rights in Civil Law in Europe (nineteenth century)," *Clio. Women, Gender, History* 43, no. 1 (2016): 250–73, <https://doi.org/10.4000/clio.13020>.

²⁴ Ute Gerhard, "Legal Particularism and the Complexity of Women's Rights in Nineteenth-Century Germany," *Private Law and Social Inequality in the Industrial Age: Comparing Legal Cultures in Britain, France, Germany, and the United States*, 2000, 137–54.

reports from influential international bodies such as the Council of Europe and the European Court of Human Rights are consulted. Scholarly works specifically addressing religious law and ethics relevant to family structures are also integral to understanding the interplay between religious traditions and legal frameworks.²⁵

RESULTS

European legal systems have made significant strides towards gender equality in family law, yet distinct approaches and historical legacies shape their current provisions. This section provides a comparative overview across Germany, France, and the UK, highlighting both convergences and divergences in key areas.

In Germany, the Basic Law enshrines the principle of equality between men and women. This constitutional commitment has driven reforms, such as the Registered Partnership Act of 2001 (LPartG), which provided a legal framework for same-sex couples, granting them rights comparable to marriage. This act was upheld by the Constitutional Court, reinforcing the principle of equality in family formation.

France, historically, was characterized by the rigid definitions of marriage enshrined in the 1804 Civil Code, which consolidated masculine domination within the family structure. However, contemporary French law has undergone substantial reforms, influenced by European Union jurisprudence and evolving societal norms. These changes have progressively broadened the conception of legitimate couples and families, leading to the recognition of same-sex couples through marriage and civil unions, thereby dismantling some of the historical rigidities.

The United Kingdom, operating under a common law system, has also seen a significant evolution in its marriage and partnership laws. Historically, the Marriage Act of 1753 initially mandated Anglican church ceremonies, reflecting the strong influence of the Church of England. This restriction was later removed by the 1836 Act, which allowed for non-conformist and civil marriages, marking a move towards greater inclusivity.⁵² More recently, the Civil Partnership Act 2004 granted same-sex couples rights identical to civil marriage, a pivotal step that was further solidified by the Marriage (Same Sex Couples) Act 2013, which introduced civil marriage for same-sex couples across England and Wales.²⁶

Germany has seen substantial improvements in spousal rights, particularly for women, driven by the 1957 Equal Rights Act and subsequent reforms. These legislative changes granted women the right to employment and ensured that men and women are considered fully equal in divorce proceedings. Spouses are now mutually obligated to support the family, reflecting a shift towards shared responsibilities.²⁷

In France, the historical legal framework, notably Article 213 of the Civil Code, explicitly mandated the wife's obedience to her husband until 1938, effectively denying her autonomous legal personhood and requiring her husband's authorization for most legal acts. Over time, sustained feminist movements and legal reforms gradually

²⁵ "Peculiarities of Legal Regulation of Intellectual Property Protection in Ukraine under Martial Law: Administrative and Civil Aspects," ResearchGate, https://www.researchgate.net/publication/379499862_Peculiarities_of_legal_regulation_of_intellectual_property_protection_in_Ukraine_under_martial_law_administrative_and_civil_aspects.

²⁶ Lukman Arake et al., "Non-Binary Gender in Siyasa Syar'iyah Perspective: Study at Religious Universities in South Sulawesi," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 7, no. 3 (2023): 1708–33, <https://doi.org/10.22373/sjhk.v7i3.20152>.

²⁷ "UTE GERHARD Legal Particularism and the Complexity of Women's Rights in Nineteenth-Century Germany - Perspectivia.net," https://perspectivia.net/servlets/MCRFileNodeServlet/pnet_derivate_00005000/gerhard_particularism.pdf.

introduced an egalitarian sharing of rights. By 1965, married women gained the right to practice a profession without their husband's authorization, and by 1971, spouses were mandated to jointly manage the family's moral and material affairs, signifying a profound shift in personal autonomy within marriage.²⁸

In the United Kingdom, the historical common law duty of a husband to maintain his wife has been abolished, replaced by statutory provisions that mutually obligate both spouses to maintain each other. Spousal maintenance is not automatically granted but is determined by a comprehensive assessment of the needs and resources of both parties, the length of the marriage, and their respective abilities to earn. Importantly, either spouse, regardless of gender, can claim maintenance from the other, reflecting a formal commitment to gender neutrality in financial support post-separation.

Germany operates under the statutory matrimonial property regime of 'Zugewinnngemeinschaft' (accrued gains), which automatically applies unless otherwise agreed. This regime entails a separation of property during the marriage, where each spouse independently owns and manages their assets. Upon divorce, the gains accrued by each spouse during the marriage are equalized, with the spouse having higher gains compensating the other for half the difference. This system was extended to registered partnerships in 2005, further promoting equality. Additionally, pension equalization ('Versorgungsausgleich') is a mandatory process in divorce, ensuring that pension credits accumulated during the marriage are combined and split equally, significantly benefiting divorced women.

In France, the historical default matrimonial property regime from 1804 to 1965 was the "community of movables and acquisitions," under which most assets were considered community property and were administered by the husband. The 1965 reform marked a significant shift, changing the default to the "community of acquisitions," which restricted joint assets primarily to those acquired during the marriage. The "separate property regime" also exists, allowing spouses to keep their assets distinct, though its choice is often influenced by existing wealth disparities favoring the husband.²⁹

The United Kingdom does not adhere to a strict 50/50 rule for the division of assets upon divorce. Instead, the process is guided by the principle of "fairness" and the "yardstick of equality," which allows for judicial discretion based on the unique circumstances of each case, including the needs of the parties, the length of the marriage, and crucially, the recognition of non-financial contributions. The historical presumption of advancement, which assumed a gift when a man transferred property to his wife or child, has been abolished, further leveling the playing field in property matters.

In Germany, parental responsibility encompasses all rights and obligations parents have concerning a child, including parental care (custody), contact rights, and the duty to provide maintenance. Joint parental custody is the norm for married parents or can be established by declaration or court order. However, if parents are unmarried and do not make a joint custody declaration, the mother retains sole custody. Reforms have also fundamentally extended the father's required child support obligation to the child's 18th year.

France has moved significantly from a historical framework where paternal power severely limited mothers' rights. In 1970, parental authority replaced paternal

²⁸ Yevhen Leheza et al., "Peculiarities of Legal Regulation of Intellectual Property Protection in Ukraine under Martial Law: Administrative and Civil Aspects," *Revista Justiça Do Direito* 37, no. 3 (2023): 157–72, <https://doi.org/10.5335/rjd.v37i3.15233>.

²⁹ "(PDF) Prenuptial Agreements and Matrimonial Property Regimes in France, 1855 -2010," https://www.researchgate.net/publication/312583740_Prenuptial_Agreements_and_Matrimonial_Property_Regimes_in_France_1855_-2010

power, signifying a shift towards shared responsibility and decision-making between both parents. Furthermore, full legal equality for natural children was achieved between 2003 and 2005, ensuring that children born outside of marriage have the same rights as those born within, a critical advancement from a historical ban on paternity establishment.

In the United Kingdom, all mothers and most fathers have legal rights and responsibilities known as 'parental responsibility'. This includes providing a home, protecting and maintaining the child, disciplining,³⁰ choosing education, agreeing to medical treatment, naming the child, and looking after the child's property. For separated parents, while parental responsibility does not automatically grant a right to spend time with children, the other parent must involve them in important decisions.³¹ Major decisions require written agreement from both parents with parental responsibility.

Germany underwent a significant reform in 1977, shifting its divorce principle from fault-based to one of irreconcilable differences. This reform also established that a male spouse unable to provide for himself after divorce is entitled to request alimony, reflecting a move towards gender-neutral support obligations.

In France, the law allowed for divorce by mutual consent in 1975, a substantial departure from previous, often unequal and restrictive, divorce conditions. The liquidation and division of assets upon divorce depend on the couple's matrimonial regime, requiring spouses to reach an amicable agreement. If an agreement cannot be reached, the court intervenes to facilitate the division.

The United Kingdom has introduced comprehensive legal frameworks for the dissolution of same-sex partnerships.³² The Civil Partnership Act 2004 and the Marriage (Same Sex Couples) Act 2013 established legal avenues for civil partnerships and civil marriage for same-sex couples, respectively, providing them with rights and responsibilities comparable to heterosexual married couples.

Impact of Legal Mechanisms on Substantive Equality

Despite formal legal advancements towards gender equality, existing legal mechanisms in European family law systems often lead to gendered outcomes, inadvertently hindering substantive equality in practice. This is largely due to the persistent undervaluation of non-financial contributions, the tension between legal principles, and the influence of implicit societal biases.³³

The historical undervaluation of homemaking and caregiving remains a significant challenge, perpetuating an imbalance in matrimonial property division and resulting in unfair settlements for women. Courts frequently struggle to quantify the economic value of domestic work, which further institutionalizes gender inequality by failing to fully recognize the profound impact of unpaid labor on a household's economic stability. This is particularly evident in the UK, where the legal principle of compensation for relationship-generated disadvantage, such as career sacrifice for caregiving, is often "universally discarded" in out-of-court settlements, leading to systematic disadvantages for women. This situation demonstrates that formal equality in law does not automatically translate to substantive equality in practice, especially when informal

³⁰ Mohd Anuar Ramli et al., "The Quest for Third Gender Equality: Challenges and Implications for Islamic Law and Muslim Women's Sustainability in Malaysia," *AHKAM: Jurnal Ilmu Syariah* 24, no. 2 (2024): 295–310, <https://doi.org/10.15408/ajis.v24i2.37746>.

³¹ Ramli et al., "The Quest for Third Gender Equality."

³² Durotun Nafisah, "Positivisasi Hukum Keluarga Islam Di Indonesia Dalam Perspektif Gender," *Al-Manahij: Jurnal Kajian Hukum Islam* 7, no. 1 (2013): 39–52, <https://doi.org/10.24090/mnh.v7i1.575>.

³³ M. Khoirul Hadi Al-Asy'ari, "Status Hukum Perempuan Menurut Ibn Hāzm Dan Kedudukannya Dalam Kompilasi Hukum Islam (KHI)," *Al-Ahkam*, October 24, 2015, 161–80, <https://doi.org/10.21580/Ahkam.2015.25.2.600>.

processes or judicial discretion are involved.³⁴

Gendered outcomes are also pronounced in divorce proceedings, stemming from a tension between the "autonomy principle" and the "compensation principle." In Western countries, including Switzerland (a relevant comparative example), the formal-egalitarian interpretation of gender equality, which emphasizes economic independence post-divorce, often conflicts with the compensatory approach that seeks to offset long-term disadvantages arising from unequal distribution of paid and unpaid work during the marriage. This conflict can result in significant losses of post-marital maintenance for women, as the autonomy principle may fail to adequately account for their past contributions and future earning capacity limitations due to care responsibilities.

Economic disparities post-divorce are well-documented. In Germany, women tend to experience longer-term economic disadvantages and a higher risk of poverty following divorce, while men may face more immediate psychological declines. Despite legal reforms, a "modified male breadwinner model" continues to influence the division of labor within German families, contributing to these uneven economic outcomes. Similarly, in France, women experience a more significant decrease in living standards after divorce compared to men, with these inequalities becoming even more pronounced in late divorces.³⁵ This demonstrates that the "formal-egalitarian interpretation" of gender equality, while seemingly fair, can inadvertently cause disadvantages for women by failing to account for the economic realities of gendered division of labor. The legal system's difficulty in quantifying care work directly leads to women's financial vulnerability post-divorce.³⁶

Implicit biases in judicial interpretation further contribute to gendered outcomes. Even when laws are designed to be gender-neutral, the "mentality of jurists" and the persistence of societal customs and practices can subtly influence how laws are applied. For example, in the UK, the high number of lone-parent households headed by single mothers is often a reflection of prevailing societal gender stereotypes and the principle of prioritizing the child's welfare, which frequently favors the primary caregiver, rather than explicit court bias.³⁷ This highlights that structural inequalities are deeply embedded, requiring more than just formal legal changes.³⁸

The recent UK Supreme Court's 2025 ruling that "sex" in the Equality Act refers to biological sex, not gender identity, has significant implications for family law. This ruling may influence the interpretation of terms like "mother" and "father" in parental roles, affect marriage classification, and impact inheritance, potentially creating new uncertainties and stress for transgender individuals. While intended to provide clarity, this decision could inadvertently create new forms of indirect discrimination for transgender individuals, even if not explicitly intended. This situation underscores the subtlety of systemic inequality, where legal definitions can have far-reaching and unintended consequences on diverse family structures and individual identities.

³⁴ Achmad Mudhofar 'Afif et al., "Gender Equality in Islamic Sharia (The Study of Bistri Mustofa's Thought in Al-Ibriz Li Ma'rifah Tafsir Al-Qur'an Al-'Aziz)," *Syariah: Jurnal Hukum Dan Pemikiran* 22, no. 1 (2022): 69–88, <https://doi.org/10.18592/sjhp.v22i1.6307>.

³⁵ "Gendered economic consequences of gray divorces in France - ECINEQ," http://www.ecineq.org/wp-content/uploads/papers_EcineqLSE/EcineqLSE-234.pdf.

³⁶ Miftahul Huda and Tri Wahyu Hidayati, "The Concept of Muhammad Shahrūr on Gender Parity in Inheritance Legislation," *El-Usrah: Jurnal Hukum Keluarga* 6, no. 2 (2023): 262–80, <https://doi.org/10.22373/ujhk.v6i2.18121>.

³⁷ "The Truth Behind the Assumed Gender Bias in the UK Family Law System - RFC," 2025, <https://www.researchforchangebristol.com/blog/e4ket5qeev7qazczmouqf3to2hm4ov>

³⁸ Hani Sholihah et al., "Reinterpretation of Justice in Islamic Inheritance Rights Based on Gender," *Al-Adalah* 21, no. 1 (2024): 101–24, <https://doi.org/10.24042/adalah.v21i1.21256>.

Influence of Religious Heritage on Family Law

The influence of religious heritage on European family law is profound, manifesting through historical traces, contemporary interactions, and implicit societal norms. This influence is dynamic and often contested, acting as both a barrier to and a catalyst for gender equality.

Christian heritage has profoundly shaped European domestic life, leading to the weakening of wider kinship groups and the introduction of new marriage norms.⁷ Historically, the Church urged Roman and Germanic rulers to adopt laws proscribing polygamy, adultery, and oppression of women, while promoting the proper care for children.³⁹ However, some historical Christian teachings also advanced notions of divinely ordained female inferiority, contributing to patriarchal structures.

In Germany, the German Civil Code (1900) initially anchored a patriarchal tradition within marriage and family law, granting the husband the final say in all matters. French Civil Code of 1804, while a landmark secular document, consolidated masculine domination, with "marital power and paternal power" being justified as "republican institutions". This historical embedding of patriarchal norms, often influenced by Christian traditions, has left deep imprints on European family law. Even when laws were secularized, the underlying concepts frequently retained this historical imprint, creating "cryptotypes" in legal thought and practice that continue to shape interpretations and societal expectations.⁹ This suggests that achieving substantive gender equality requires not just new laws but a critical deconstruction of these historical patriarchal foundations.⁴⁰

In the United Kingdom, Christian ideology, alongside classical thought, significantly shaped gender roles and family life in the 18th and 19th centuries, emphasizing the male as the head of the household and the main breadwinner, and women as responsible for domestic duties and childcare. This influence was reinforced by evangelical ideology, which strengthened the moral value placed on female domesticity and religiosity, often confining women to the private sphere.⁴¹

The contemporary landscape reveals a dynamic interplay between religious heritage and family law, often marked by tensions and evolving harmonization efforts. This includes voting to remove references to the marital status of same-sex couples in church labor law and supporting liturgical blessings for same-sex couples. These internal shifts represent a counter-narrative to traditional religious conservatism, highlighting the "multivocal" nature of religious traditions. Simultaneously, a parallel Islamic family justice system operates in Germany, often disadvantaging women through practices such as prioritizing family unity over self-determination, unequal divorce procedures, and the non-recognition of religious marriages under German civil law. This dual reality underscores the complex and sometimes contradictory influence of religious heritage.⁴²

DISCUSSIONS

³⁹ "The Reformation of Marriage Law in Martin Luther's Germany: Its Significance Then and Now - John Witte, Jr.," <http://www.johnwittejr.com/uploads/5/4/6/6/54662393/a9.pdf>.

⁴⁰ Yusida Fitriyati et al., "Reconsidering Inheritance Equality: Gender Justice in Religious Court Decisions through the Lens of Maqashid Al-Shariah," *Nurani: Jurnal Kajian Syari'ah Dan Masyarakat* 25, no. 1 (2025): 122–40, <https://doi.org/10.19109/nurani.v25i1.27133>.

⁴¹ "Gender in the Proceedings | The Proceedings of the Old Bailey," <https://www.oldbaileyonline.org/about/gender>.

⁴² "Gender and Catholic authorities | EHNE," <https://ehne.fr/en/encyclopedia/themes/gender-and-europe/religion-and-gender-in-europe/gender-and-catholic-authorities>.

The comparative analysis of European family law systems reveals a complex and often contradictory landscape in the pursuit of gender equality. While a general convergence towards international human rights standards is evident across Germany, France, and the UK, this alignment often masks significant doctrinal divergences and persistent substantive inequalities. The convergence can be attributed to the unifying influence of EU directives and the jurisprudence of the European Court of Human Rights, which collectively push national legal systems towards common standards of equity. However, the distinct legal traditions—civil law in Germany and France, versus common law in the UK—and their unique historical trajectories lead to varied approaches in areas such as matrimonial property regimes and divorce principles. For instance, Germany's "accrued gains" system, France's evolving community property regimes, and the UK's discretionary "fairness" approach in asset division represent fundamental differences rooted in their respective legal histories.

The persistence of gendered outcomes, despite formally gender-neutral laws, is a critical observation. This phenomenon is not merely incidental but stems from a complex interplay of legal texts, judicial interpretation, and deeply ingrained societal norms. The consistent undervaluation of care work, for example, is a pervasive issue that disproportionately affects women. Even when legal frameworks aim for equality, the difficulty in quantifying the economic value of domestic and care labor can lead to women experiencing significant financial disadvantages post-divorce. This is particularly evident in the tension between the "autonomy principle," which emphasizes individual economic independence, and the "compensation principle," which seeks to offset historical disadvantages from gendered divisions of labor. The increasing traction of the autonomy principle in some jurisdictions, while seemingly progressive, can inadvertently penalize caregivers by failing to adequately recognize and compensate their non-financial contributions. This highlights that a legal system's difficulty in quantifying care work directly leads to women's financial vulnerability after marital dissolution.

The explicit and implicit influences of Christian and Islamic religious heritage on the current state of gender equality in European family law are profound and multifaceted. Historically, both Christian and, in some contexts, Islamic traditions have contributed to the establishment of patriarchal norms within family structures, which were subsequently embedded in early civil codes and common law principles. These historical foundations continue to manifest as "cryptotypes" in legal thought and practice, subtly shaping judicial interpretations and legislative priorities even in ostensibly secular contexts. This enduring legacy means that achieving substantive gender equality requires not just new laws but a critical deconstruction of these historical patriarchal underpinnings.

The contemporary interactions reveal a dynamic and contested landscape. While some religious actors and institutions continue to perpetuate traditional, often discriminatory, gender norms (e.g., certain Sharia councils operating without accountability in the UK and Germany, or conservative Catholic stances on same-sex marriage), there are also powerful counter-narratives emerging from within religious communities. The progressive shifts within the German Catholic Church regarding LGBTQ+ equality and the advocacy of Islamic feminists in France for gender-egalitarian interpretations of religious texts exemplify the "multivocal" nature of religious traditions.⁴³ This demonstrates that religious heritage can be both a source of patriarchal norms and a resource for challenging them. The outcome often depends on the internal dynamics of religious communities, their institutional relationship with the state, and the

⁴³ "Parental rights and responsibilities: What is parental responsibility ...," <https://www.gov.uk/parental-rights-responsibilities>.

agency of progressive voices within them.

The state's approach to the secular-religious continuum is a major factor shaping gender equality outcomes in family law. Where religious and political power are tightly linked, family law tends to discriminate against women, as patriarchal interpretations gain greater authority and immunity from contestation. Conversely, in contexts with a clearer separation of secular and religious institutions, family law tends to be more egalitarian. This implies that a state's approach to religion is not an incidental factor but a fundamental determinant of gender equality outcomes. The headscarf debate in France, for instance, illustrates how a strictly secular state's interpretation of gender equality can clash with religious practices, revealing underlying tensions in gender systems. The UK Supreme Court's ruling on the biological definition of "sex" further highlights how societal debates, often influenced by religious convictions, can directly shape legal interpretations with profound implications for diverse gender identities.⁴⁴

Finally, the pervasive influence of implicit societal norms, often deeply rooted in religious values, acts as an "invisible hand" that shapes how laws are applied and how individuals experience family life. These norms, such as the persistent expectation of women as primary caregivers or the lingering influence of the male breadwinner model, can lead to gendered outcomes even when laws are formally neutral. This underscores the limitations of purely legal reforms; achieving substantive gender equality requires efforts that also target these underlying societal expectations and "cryptotypes" through public education, awareness campaigns, and a critical challenge to deeply ingrained cultural narratives.

Based on the normative analysis and comparative insights, a reconstructed model of family law is proposed to achieve substantive gender equality. This model moves beyond formal equality to address the nuanced ways in which legal frameworks and societal norms perpetuate gendered outcomes.

The reconstructed model recognizes that religious traditions are not monolithic and can be both sources of inequality and catalysts for reform. Therefore, strategies for engagement must be nuanced:

1. Promoting Internal Religious Reform: Actively supporting and amplifying progressive voices within Christian and Islamic communities that advocate for gender equality based on reinterpretations of religious texts and ethical principles. This involves fostering dialogue and collaboration with religious scholars, women's groups, and activists who are working for change from within their faith traditions.

2. Strengthening State Oversight and Regulation: Implementing clear legal frameworks to regulate parallel religious justice systems (e.g., Sharia councils) to ensure they do not undermine constitutional rights, human rights standards, or gender equality principles. This includes mandating civil registration of all religious marriages to ensure legal recognition and protection for all parties, particularly vulnerable women, in cases of marital breakdown.

3. Public Education and Awareness: Launching comprehensive public education campaigns to counter anti-gender movements and stereotypes rooted in traditional religious interpretations. These campaigns would promote inclusive understandings of gender and family structures, challenging deeply ingrained cultural narratives that perpetuate inequality. This involves fostering a societal shift in understanding gender roles and the value of diverse contributions to family life.

4. Nuanced Legal Accommodation: Developing legal approaches that can accommodate religious diversity without compromising fundamental human rights and gender equality. This may involve exploring how religious values can be translated into

⁴⁴ "Equality Act 2010 - Explanatory Notes - Legislation.gov.uk," <https://www.legislation.gov.uk/ukpga/2010/15/notes/division/3/15>

"public reason" arguments that are universally accessible and compatible with secular legal principles. Such an approach seeks to avoid a blanket rejection of religious influence while critically assessing its impact on equality.

This multi-pronged approach to reconstruction acknowledges that family law reform is not merely a legal exercise but a complex societal project. It requires combining legislative action, judicial education, and active engagement with civil society and religious communities to achieve substantive and sustainable gender equality.

Iceland, like other countries in the Scandinavian region, demonstrates consistently high standards of legal protection of gender equality within family legal relations. At the legislative level, Iceland has established equality of parental rights and responsibilities in the process of raising children and making key decisions related to family life. In addition, Iceland is actively implementing comprehensive measures to combat gender discrimination, covering both legal and social aspects of ensuring gender equality in all spheres of public life. Thus, individual EU Member States, in particular the Scandinavian countries, are not only actively implementing norms that comply with European legislation, but also go beyond its requirements, demonstrating their own national models of ensuring gender justice. At the same time, other countries, such as the United Kingdom, Poland and a number of others, strive to keep up with the pan-European trends, but their steps in this direction are often adaptive and gradual.⁴⁵

Table. Comparative analysis of ensuring gender equality and protection of spousal rights: Ukraine vs. EU countries

Benchmark	Ukraine	European Union countries (general trends)
Legal framework	Constitution of Ukraine (Article 24), Family Code of Ukraine, Law of Ukraine "On Ensuring Equal Rights and Opportunities of Women and Men", Laws on the Prevention of Domestic Violence. CEDAW, Istanbul Convention ratified.	Constitutions/fundamental laws of member states, EU Directives (equal pay, employment), EU Charter of Fundamental Rights, ECHR decisions. Most have ratified CEDAW, Istanbul Convention.
Personal non-property rights of spouses	Full equality is enshrined: equal right to choose a surname, place of residence, profession, participation in solving family life issues, respect for individuality.	Full equality of rights and obligations in most countries. There are differences in details, but the general principle of equality is universal.
Property rights of spouses	The regime of joint joint property is the main one. The possibility of concluding a marriage	Different regimes: from the regime of joint property (France, Spain) to the regime of separate property

⁴⁵ Leheza et al., "Peculiarities of Legal Regulation of Intellectual Property Protection in Ukraine under Martial Law: Administrative and Civil Aspects."

	contract (increasingly popular). A clear distinction between joint and individual private property.	(Germany, Belgium by default). Marriage contracts are a common tool for regulating property relations.
Protection from domestic violence	Criminalization of domestic violence. Protection orders. Creation of victim assistance centers, mobile teams. Insufficient number of specialized shelters and rehabilitation centers.	Active implementation of the Istanbul Convention. Developed network of shelters, hotlines, psychological and legal assistance centers. Different models of police response and protection orders. Enhanced accountability.
Rights of parents in relation to children	Equal rights and responsibilities of parents in relation to the upbringing, education and development of children. Resolution of disputes regarding the child's place of residence and parental involvement.	Equal parental rights and responsibilities are the norm. Some countries have extensive mediation mechanisms in parental disputes. Encouragement of equal participation of both parents in childcare (paternal leave).
Support for families with children	State payments at the birth of a child, partial payment of maternity leave. Development of a network of preschool institutions (not always sufficient).	Significant state programs to support families, a developed system of kindergartens, financial assistance, tax breaks, extended paid parental leave for both parents (e.g. Scandinavian countries).
LGBTIQ+ marriages/partnerships	Same-sex marriages are not recognized. There is an institution of "registered partnership" for military and civil partnerships for persons of the same sex (draft law).	The vast majority of EU countries have legalized same-sex marriages (e.g. the Netherlands, Spain, France, Germany) or civil partnerships, granting them equal or almost equal rights with traditional marriages.
Integration vector for Ukraine	Harmonization of legislation with EU law (Acquis Communautaire). Strengthening institutional capacity, raising public awareness. EU experience as a guide for further reforms.	Continuing to improve policies, exchange of best practices between Member States. Providing support to candidate countries in the process of harmonizing their legislation.

Strengthening gender education and awareness-raising: Conducting systematic educational campaigns to overcome gender stereotypes, starting with school education, as well as raising citizens' awareness of their rights in marital and family relations.⁴⁶

Creating effective monitoring and evaluation mechanisms: Developing clear indicators and mechanisms for monitoring progress in achieving gender equality in marital and family relations, which will allow for a prompt response to identified problems.

Despite the fact that significant progress has been achieved at the level of legislative consolidation of the principle of equal rights and opportunities for men and women in most Member States of the European Union, it must be stated that the actual implementation of gender equality in the everyday social environment remains incomplete. This indicates that on the way to the full integration of the principles of gender equality into the practice of everyday life, a key role is played not only by legal norms, but also by effective administrative, social and educational mechanisms that should ensure a change in social attitudes, cultural stereotypes and the real behavior of subjects of social relations.⁴⁷

CONCLUSION

This study has critically examined the persistent challenges in achieving substantive gender equality within diverse European family law systems, navigating the inherent tension between individual contractual autonomy and imperative legal protections. The analysis revealed that while European legal systems, particularly those of Germany, France, and the UK, have converged towards international human rights standards and formally embraced gender equality, significant doctrinal divergences and substantive inequalities persist. These inequalities are often manifested in the gendered outcomes of divorce and property division, largely due to the persistent undervaluation of non-financial contributions like care work and the tension between legal principles emphasizing individual autonomy versus compensation for relationship-generated disadvantages.

The reconstruction of family law for fairness, inclusivity, and substantive gender equality in a diverse European context remains an ongoing and complex endeavor. Achieving genuine equality requires moving beyond formal legal provisions to address deeply embedded societal norms, judicial biases, and the multifaceted influence of religious traditions. This necessitates a continuous critical engagement with historical legacies, an adaptive response to evolving societal realities, and a multi-pronged approach that combines legislative reform, judicial education, and active collaboration with civil society and progressive voices within religious communities. The pursuit of equitable and gender-sensitive justice in family relations is not merely a legal imperative but a fundamental component of a truly just and inclusive society.

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