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The Decline of Formal Marriage: Inevitable or Reversible?

MARSHA GARRISON*

I. Introduction

All over the industrialized world, marriage is in decline. Cohabitation, which has waxed as marriage has waned, is a much less stable relational form. In the United States, half of all cohabiting relationships dissolve within eighteen months;¹ in both North America and Europe, children born to cohabiting parents are two to four times more likely to experience their parents' separation than are children born to married parents.² Cohabitation is also a more variable relational form than marriage.

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1. See Patrick Heuveline & Jeffrey M. Timberlake, *The Role of Cohabitation in Family Formation: The United States in Comparative Perspective*, 66 J. MARRIAGE & FAM. 1214, 1223 tbl.2 (2004). Although the average duration of U.S. cohabitation does not appear to be increasing (see Andrew J. Cherlin, *Toward a New Home Socioeconomics of Union Formation*, in THE TIES THAT BIND: PERSPECTIVES ON MARRIAGE AND COHABITATION 126, 135 (Linda J. Waite ed., 2000) [hereinafter THE TIES THAT BIND] (summarizing evidence)), the duration of cohabitation may be increasing in some other countries. See Anne Barlow & Grace James, *Regulating Marriage and Cohabitation in 21st Century Britain*, 67 MOD. L. REV. 143, 159 (2004) (noting that 47% of all U.K. cohabitation relationships had endured five or more years in last national survey).

2. See, e.g., Wendy Manning et al., *The Relative Stability of Cohabiting and Marital Unions for Children*, 23 POPUL. RES. & POL'Y REV. 135 (2004) (finding that U.S. white, black and Hispanic children born to cohabiting parents experience greater levels of instability than children born to married parents and that white and Hispanic children whose cohabiting parents marry do not experience the same levels of family stability as those born to married parents); Wendy Manning & Ronald E. Bulanda, *Cohabitation and Family Trajectories*, in HANDBOOK OF MEASUREMENT ISSUES IN FAMILY RESEARCH 199 (Sandra Hofferth & Lynne Casper eds., 2006) (reporting that by age fourteen, three-fifths of children who lived with two cohabiting biological parents experienced family change in contrast to only one-third of children who lived with two married biological parents); R. Kelly Raley & Elizabeth Wildsmith, *Cohabitation and Children's Family Instability*, 66 J. MARRIAGE & FAM. 210 (2004).

Demographers have identified six or seven different cohabitational types, ranging from a substitute for being single to a substitute for formal marriage.³ Whereas marriage establishes “a social institution that rests upon common values and shared expectations for appropriate behavior within the partnership,” cohabitational relationships lack “social blueprints” and even a nomenclature;⁴ cohabitation thus does not produce a consistent meaning either for those within such a relationship or those outside it.⁵

Because of its relative instability and variability, cohabitation presents public-policy and fact-finding challenges that formal marriage does not. Because cohabitation is not invariably, or even typically, the equivalent of marriage, many marital-status classifications appropriately divide the married from the unmarried; however, because marital decision-making may be affected by (dis)incentives produced by these classifications, policymakers face difficult choices in deciding whether, and to what extent, they should revise statutory classifications to avoid marriage disincentives.⁶ If the law allows cohabitants to show marital understandings in order to obtain benefits associated with marital status, fact-based assessment by some decisionmaker—with all the delay, expense, uncertainty, and potential inconsistency that this entails—will be necessary. If the law does not allow such a showing, potential inequity will result.⁷

The research evidence also shows that formal marriage is associated with a range of health, wealth, and happiness benefits for both children and adult partners. These benefits are concentrated in low-conflict, first marriages; the socioeconomic and relational attributes of those who marry also explain a considerable proportion of marital advantage. But the

3. See Heuveline & Timberlake, *supra* note 1, at 1216–18; Kathleen Kiernan, *The Rise of Cohabitation and Childbearing Outside Marriage in Western Europe*, 15 INT’L J.L., POL’Y & FAM. 1 (2001). See also Barlow & James, *supra* note 1, at 157–61 (quoting British cohabitants describing range of reasons for cohabitation).

4. Steven L. Nock, *A Comparison of Marriages and Cohabiting Relationships*, 16 J. FAM. ISSUES 53, 74 (1995) (“[C]ohabitation is an incomplete institution. No matter how widespread the practice, nonmarital unions are not yet governed by strong consensual norms or formal laws. . . . [T]here is no widely recognized social blueprint or script for the appropriate behavior of cohabiters, or for the behavior of the friends, families, and other individuals and institutions with whom they interact.”). See also STEVEN L. NOCK, *MARRIAGE IN MEN’S LIVES* (1998).

5. Nock, *Comparison*, *supra* note 4.

6. See Marsha Garrison, *Reviving Marriage: Could We? Should We?*, 9 J.L. & FAM. STUD. (2008) (reviewing evidence).

7. For a more detailed discussion of these problems, see Marsha Garrison, *Is Consent Necessary? An Evaluation of the Emerging Law of Cohabitant Obligations*, 52 UCLA L. REV. 815, 848–54 (2005); Marsha Garrison, *Marriage Matters: What’s Wrong with the ALI’s Domestic Partnership Proposal*, in RECONCEIVING THE FAMILY: PERSPECTIVES ON THE AMERICAN LAW INSTITUTE’S PRINCIPLES OF FAMILY DISSOLUTION (Robin H. Wilson ed., 2006) [hereinafter RECONCEIVING THE FAMILY].

evidence nonetheless suggests that the advantage is real and significant.⁸

Because ceremonial marriage and childbearing within such unions offer public advantages that informal unions do not, public policies designed to encourage individuals to delay childbearing until marriage are desirable. So are policies that encourage couples who have marital understandings to formalize their unions through ceremonial marriage. In order to effectively design such policies, however, we need to understand why formal marriage is in decline. This paper critically examines current economic and cultural explanations for these phenomena. It then analyzes the public-policy implications of the available evidence.

II. Why Marriage Matters

Formal marriage signals intention. It signals each partner who enters into a new marital union, their friends, and their families.⁹ It also signals strangers; those who meet or do business with the married couple understand that each spouse has entered into a binding commitment that entails expectations of fidelity, sharing, and lifetime partnership.¹⁰ Formal marriage also signals intention to the state; government officials can and do assume that the married couple has undertaken obligations to each other that both justify treating them as an economic unit and assuming that a deceased spouse would want his or her marital partner to obtain the lion's share of the decedent spouse's assets.¹¹

Formal marriage accomplishes all of these signaling functions prospectively, efficiently, and unequivocally. After a couple marries, there is no question about what sort of relationship they intend. No litigation will be necessary to determine their relational status. No decisionmaker will be required to sift through heaps of self-serving testimony about individual promises made and understandings reached. One partner cannot surprise the other by bringing a fraudulent claim, nor can one partner surprise the other by trying to evade a just claim.

Informal marriage lacks all of these merits. It must be proven and thus offers only a retrospective status. Gaining that status will almost invariably necessitate costly and time-consuming litigation.

8. See SECTION II, *infra*.

9. See Michael J. Trebilcock, *Marriage as a Signal*, in *THE FALL AND RISE OF FREEDOM OF CONTRACT* (F.H. Buckley ed., 1999) (concluding that willingness to marry signals the undertaking of a long-term, exclusive relational commitment); Elizabeth S. Scott, *Marriage, Cohabitation and Collective Responsibility for Dependency*, 2004 U. CHI. LEGAL FORUM 225.

10. See Elizabeth S. Scott, *Social Norms and the Legal Regulation of Marriage*, 86 VA. L. REV. 1901, 1907 (2000); Eric A. Posner, *Family Law and Social Norms*, in *THE FALL AND RISE OF FREEDOM OF CONTRACT* 256, 259–62 (F.H. Buckley ed., 1999); Elizabeth S. Scott & Robert E. Scott, *Marriage as Relational Contract*, 84 VA. L. REV. 1225, 1288–92 (1998).

11. See Garrison, *supra* note 6.

These basic disadvantages of informal marriage are compounded by the evidentiary problems inherent in fact-based determination of marital status. Marital intent is subjective; when not publicly expressed, it is extraordinarily hard to prove. This basic problem is exacerbated by the range of meanings associated with cohabitation and the fact that cohabitants often do not agree about the nature of their relationship. Researchers have found that, in twenty to forty percent of cohabiting relationships, partners express different views on whether they plan to marry each other.¹² Moreover, in one survey, about a third of the time, only one partner felt that the couple spent a lot of time together, and in forty percent of the cases, one partner, but not the other, reported a high degree of happiness with the relationship.¹³

Given the lack of uniformity in cohabitants' understandings and behaviors, the mere fact of living together provides little evidence of what understandings a particular relationship has produced. One partner may deeply believe that the relationship is committed; the other may deeply believe the reverse. A breakup can only enhance such disagreement, setting the stage for disappointed expectations and resulting litigation. These difficulties are bad enough when both cohabitants are able to testify at a hearing; they are even worse when the issue of marital understanding is tested in a proceeding brought after one partner dies.

These various evidentiary problems have fueled the movement away from the common-law-marriage doctrine. At one time, nearly two-thirds of the states recognized common law marriage; by 2002, only twelve jurisdictions did so,¹⁴ and two of the twelve had adopted strict limitations on its establishment.¹⁵ This decline reflects the sad fact that post-hoc, a litigation-based determination of marital commitment often "leads to fraud and uncertainty in the most important of human relationships."¹⁶ The evidentiary problems posed by the common-law-marriage doctrine

12. See Susan L. Brown, *Union Transitions Among Cohabitors: The Significance of Relationship Assessment and Expectations*, 62 J. MARRIAGE & FAM. 833, 838 (2000) (about 20%); Larry L. Bumpass et al., *The Role of Cohabitation in Declining Rates of Marriage*, 53 J. MARRIAGE & FAM. 913, 923 (1991) (same); Sharon Sassler & James McNally, *Cohabiting Couple's Economic Circumstances and Union Transitions: A Re-examination Using Multiple Imputation Techniques*, 32 SOC. SCI. RES. 553 (2004) (42%).

13. See Brown, *supra* note 12.

14. See HARRY E. KRAUSE ET AL., *FAMILY LAW: CASES, COMMENTS, AND QUESTIONS* 87 (5th ed. 2003).

15. See TEX. FAM. CODE ANN. § 2.402 (requiring affirmation of a common law marriage in "declaration form"); UTAH CODE ANN. § 30-1-4.5(2) (requiring establishment of a common law marriage within one year of its dissolution).

16. HOMER H. CLARK, JR., *THE LAW OF DOMESTIC RELATIONS IN THE UNITED STATES* 59 (2d ed. 1987). See also Cynthia Grant Bowman, *A Feminist Proposal to Bring Back Common Law Marriage*, 75 OR. L. REV. 709, 732-51 (1996).

were minimized when nonmarital cohabitation was rare; they are magnified in an era, like this one, in which cohabitation is extraordinarily common and extremely variable in its meaning.

The uncertainty, cost, evidentiary, and rule-evasion problems inherent in informal marriage justify state policies designed to encourage formal marriage when a couple has reached a marital understanding. Informal marriage cannot clearly, efficiently, and prospectively alter a couple's status in accordance with their intentions; formal marriage can and does.

Formal marriage is also associated with a range of benefits to adult partners and their children. Cross-national surveys show that marriage is associated with higher levels of subjective well-being throughout the industrialized and nonindustrialized world.¹⁷ Researcher after researcher has reported that married individuals typically live longer and healthier lives than the unmarried; husbands and wives get more sleep, eat more regularly, and visit the doctor more often; they abuse addictive substances and engage in risky behaviors less frequently.¹⁸ Married men and women also do better economically than their unmarried counterparts. Married

17. See Ed Diener et al., *Similarity of the Relations Between Marital Status and Subjective Well-Being Across Cultures*, 31 *J. CROSS-CULTURAL PSYCHOL.* 419 (2000) (finding, based on forty-two-nation survey, that positive relationship between marital status and subjective well-being did not differ by gender and was "very similar" across the world); Steven Stack & J. Ross Eshleman, *Marital Status and Happiness: A 17-Nation Study*, 60 *J. MARRIAGE & FAM.* 527 (1998) (finding that "married persons have a significantly higher level of happiness than persons who are not married . . . independent of . . . control variables including ones for sociodemographic conditions and national character." Although cohabitants had a higher level of happiness than single persons, their happiness level was still "less than one quarter of [that] of married persons.") See also Ping Qin, *Suicide Risk in Relation to Socioeconomic, Demographic, Psychiatric, and Familial Factors: A National Register-Based Study of All Suicides in Denmark, 1981–1997*, 160 *AM. J. PSYCHIATRY* 765 (2003) (reporting significantly higher risk of suicide among single and cohabiting Danes, despite widespread acceptance of cohabitation in Denmark). But see Kelly Musick & Larry Bumpass, *Cohabitation, Marriage, and Trajectories in Well-Being and Relationships* (Calif. Ctr. Popul. Res. On-Line Working Paper Series 003-06, 2006), http://www.ccpr.ucla.edu/ccprwpseries/ccpr_003_06.pdf (finding, in longitudinal study, no difference between the effects of moving into marriage compared to cohabitation on happiness and depression and only modest differences in health, self esteem, intergenerational relationships, and couple relationships that are small and appear to dissipate over time); Anke C. Zimmermann & Richard A. Easterlin, *Happily Ever After? Cohabitation, Marriage, Divorce, and Happiness in Germany*, 32 *POPUL. & DEV. REV.* 511 (2006) (finding that life satisfaction of individuals in intact marriages remained significantly higher than it was before marriage, but that life satisfaction two or more years after marriage and life satisfaction in cohabiting unions prior to marriage was not significantly different).

18. See LINDA WAITE & MAGGIE GALLAGHER, *THE CASE FOR MARRIAGE: WHY MARRIED PEOPLE ARE HAPPIER, HEALTHIER, AND BETTER OFF FINANCIALLY* 47–64 (2000) (summarizing research); Ross Stolzenberg & Linda J. Waite, *How Do Family and Work Affect Health and Well-Being?: Marriage, Divorce, and Paid Employment*, in *WORK, FAMILY, HEALTH, AND WELL-BEING* (Suzanne Bianchi ed., 2005) (same); Amy Mehraban Pienta et al., *Health Consequences of Marriage for the Retirement Years*, 21 *J. FAM. ISSUES* 559 (2000). However, the evidence is conflicting on whether the married rate their health more highly than the unmar-

men earn more than either single men or cohabitants.¹⁹ Married couples also have a higher savings rate and thus accrue greater wealth than the unmarried.²⁰

The marital advantage also provides benefits to a couple's children. Because of the greater stability that marriage provides, marital children are exposed to many fewer financial,²¹ physical,²² and educational risks;²³ these lower risks are associated with higher levels of well-being.²⁴ There is also evidence that the advantages conferred by marital childbearing and rearing transcend the specific benefits associated with residential and economic stability. For example, married fathers appear to be more involved and spend more time with their children than unmarried fathers; if

ried. See Linda J. Waite, *Trends in Men's and Women's Well-Being in Marriage*, in *THE TIES THAT BIND*, *supra* note 1, at 368, 375–79; Zheng Wu et al., “*In Sickness and in Health*”: *Does Cohabitation Count?*, 24 *J. FAM. ISSUES* 811 (2003).

19. “[T]he general consensus in the literature is that controlling for other observable characteristics, married men are simply more productive than unmarried men.” Jeffrey S. Gray & Michel J. Vanderhart, *On the Determination of Wages: Does Marriage Matter?*, in *THE TIES THAT BIND*, *supra* note 1, at 356. Married men also tend to work longer hours and to choose higher-paying jobs and professions. See WAITE & GALLAGHER, *supra* note 18, at 99–105; Valerie K. Oppenheimer, *Cohabiting and Marriage During Young Men's Career-Development Process*, 40 *DEMOGRAPHY* 127 (2003). The male “marriage premium” has declined, however, for reasons that are poorly understood. See Philip N. Cohen, *Cohabitation and the Declining Marriage Premium for Men*, 29 *WORK & OCCUPATIONS* 346 (2002).

20. See Joseph Lupton & James P. Smith, *Marriage, Assets, and Savings*, in *MARRIAGE AND THE ECONOMY: THEORY AND EVIDENCE FROM ADVANCED INDUSTRIAL SOCIETIES* 129 (Shoshana Grossbard-Schechtman ed., 2003); Janet Wilmoth & Gregor Koso, *Does Marital History Matter? Marital Status and Wealth Outcomes Among Preretirement Adults*, 64 *J. MARRIAGE & FAM.* 254 (2002); Jay L. Zagorsky, *Marriage and Divorce's Impact on Wealth*, 41 *J. SOC.* 406 (2005).

21. See LYNNE M. CASPER & SUZANNE M. BIANCHI, *CONTINUITY AND CHANGE IN THE AMERICAN FAMILY* 111–12 fig.4.3 (2002) (reporting, in 1998, 6.9% poverty rate for married-parent households and 38.7% rate for single-mother households). Noncustodial divorced and never-married parents are also less likely to pass wealth on to their adult children. See Frank F. Furstenberg, Jr. et al., *The Effect of Divorce on Intergenerational Transfers: New Evidence*, 32 *DEMOGRAPHY* 319 (1995); Nadine F. Marks, *Midlife Marital Status Differences in Social Support Relationships with Adult Children and Psychological Well-Being*, 16 *J. FAM. ISSUES* 5 (1995).

22. Rates of physical and sexual abuse are much higher when children live with an adult stepparent or cohabitant. See Robin Fretwell Wilson, *Undeserved Trust: Reflections on the ALI's Treatment of De Facto Parents*, in *RECONCEIVING THE FAMILY*, *supra* note 7 (reviewing evidence).

23. See Wendy Sigle-Rushton & Sara McLanahan, *Father Absence and Child Well-Being: A Critical Review*, in *THE FUTURE OF THE FAMILY* 116, 120–22 (Daniel P. Moynihan et al. eds., 2004) [hereinafter *THE FUTURE OF THE FAMILY*] (reviewing evidence); SARA McLANAHAN & GARY SANDEFUR, *GROWING UP WITH A SINGLE PARENT: WHAT HURTS, WHAT HELPS* 39–63 (1994) (same).

24. See Paul R. Amato & Jacob Cheadle, *The Long Reach of Divorce: Divorce and Child Well-Being Across Three Generations*, 67 *J. MARRIAGE & FAM.* 191, 193 (2005) (summarizing studies); Sigle-Rushton & McLanahan, *supra* note 23, at 122–25 (same).

parental separation occurs, they see their children more often and pay child support more regularly.²⁵ Living with married parents is also significantly linked to age of sexual initiation, likelihood of having a teen birth, and high school graduation, even after family instability is taken into account.²⁶ Indeed, the advantages of marriage appear to extend into a child's adulthood and even to his or her children. Researchers have documented a strong link between growing up in a single-parent household and adult income, health, and emotional stability.²⁷ A number of studies have also found that both men and women who experience a single-parent household as children are more likely, as adults, to experience marital discord and to divorce or separate.²⁸

For both adults and children, the marital advantage is concentrated in low-conflict relationships. Researchers have found that the continuation of a high-conflict marriage is *negatively* associated with the health and happiness,²⁹ indeed, longitudinal surveys show that "parents' marital

25. See CASPER & BIANCHI, *supra* note 21, at 46 (reporting that children whose parents never married see their fathers less frequently after parental separation); MARCY CARLSON ET AL., UNMARRIED BUT NOT ABSENT: FATHERS' INVOLVEMENT WITH CHILDREN AFTER A NONMARITAL BIRTH (CRCW Working Paper 2005-07) (finding that parents' relationship status at child's birth is key predictor of paternal involvement); Lingxin Hao, *Family Structure, Private Transfers, and the Economic Well-Being of Families with Children*, 75 SOC. FORCES 269 (1996) (finding that married fathers were more likely to pay child support); Sandra L. Hofferth & Kermyt G. Anderson, *Are All Dads Equal? Biology Versus Marriage as a Basis for Paternal Investment*, 65 J. MARRIAGE & FAM. 213, 223-24 (2003) (finding that unmarried fathers were significantly less involved with their children than married fathers). See also Susan L. Brown, *Family Structure and Child Well-Being: The Significance of Parental Cohabitation*, 66 J. MARRIAGE & FAM. 351 (2004) (reporting that children living in cohabiting-parent families experienced worse outcomes, on average, than those residing with married-parent families; among children age six to eleven, economic and parental resources attenuated these differences, but resources did not make a difference among adolescents age twelve to seventeen).

26. See Wendy E. Manning & Ronald D. Bulanda, *Parental Cohabitation Experiences and Adolescent Behavioral Outcomes* (Bowling Green State Univ. Working Paper 06-15, 2006), <http://www.bgsu.edu/organizations/cfdr/research/pdf/2006/2006-15.pdf>. See also Julie E. Artis, *Maternal Cohabitation and Child Well-Being Among Kindergarten Children*, 69 J. MARRIAGE & FAM. 222 (2007) (finding no differences in child well-being for children living in cohabiting stepfamilies and cohabiting biological-parent households).

27. See Sigle-Rushton & McLanahan, *supra* note 23, at 124-26 (reviewing research).

28. See PAUL R. AMATO & ALAN BOOTH, A GENERATION AT RISK: GROWING UP IN AN ERA OF FAMILY UPHEAVAL 106-17 (1997) (summarizing studies); Amato & Cheadle, *supra* note 24, at 192-93 (same). See also Chris Albrecht & Jay D. Teachman, *The Childhood Living Arrangements of Children and the Characteristics of Their Marriages*, 25 J. FAM. ISSUES 86 (2004); Kathleen Kiernan, *European Perspectives on Union Formation*, in THE TIES THAT BIND, *supra* note 1, at 40, 55 tbl.3.8.

29. See Debra Umberson et al., *You Make Me Sick: Marital Quality and Health Over the Life Course*, PRC Working Paper No. 03-04-05, 2005), http://www.prc.utexas.edu/working_papers/wp_pdf/03-04-05.pdf (reviewing evidence); J.K. Kiecolt-Glaser & T.L. Newton, *Marriage and Health: His and Hers*, 127 PSYCHOL. BULL. 472 (2001) (finding that unhappy marriages have negative physical-health consequences). See also Catherine E. Ross et al., *Reconceptualizing*

unhappiness and discord have a broad negative impact on virtually every dimension of offspring well-being.”³⁰

Moreover, remarriage fails to confer the same advantage as a first marriage.³¹ Sociologist Steven Nock found that while first marriage was associated with significant gains in men’s annual income, weeks worked, and occupational prestige, remarriage was actually correlated with *negative* economic consequences: men who remarried worked less, earned less, and had less prestigious occupations than they did before their remarriages.³² Remarriage to a stepparent also fails to confer the same advantages as a continuing marriage between the child’s parents. Children living in stepfamilies tend to score lower than children living in intact families on tests of emotional and social well-being. Stepparents tend to be less warm, less involved, and less active in children’s lives than are biological parents in intact, marital households.³³

Selection effects also explain away a significant portion of the marital advantage. To the extent that those who marry are wealthier—or happier, or healthier—before marriage, they should maintain these advantages after marriage. Although the jury is still out on the extent to which the marriage “premium” derives from preexisting characteristics or the married state, we know that both marriage and marital parenting are strongly associated with higher socioeconomic status

Having a child while single is three times as common for the poor as for the affluent. Half of poor women who give birth while unmarried have no high school diploma at the time, and nearly a third have not worked at all in the last year. . . . And the situations of the men that father their children are not much better. More than four in ten poor men who have a child outside of marriage have already been to prison or jail by the time the baby is born; nearly half lack

Marital Status as a Continuum of Social Attachment, 57 J. MARRIAGE & FAM. 129 (1995) (finding that individuals with unhappy relationships have higher distress levels than people without partners).

30. AMATO & BOOTH, *supra* note 28, at 219.

31. See Umberson et al., *supra* note 29 (reviewing evidence).

32. See NOCK, *supra* note 4, at 66–82.

33. See MCLANAHAN & SANDEFUR, *supra* note 23; Hofferth & Anderson, *supra* note 25, at 223–24 (finding that stepfathers spent less time and were less involved with children than married biological fathers); Wendy D. Manning & Kathleen A. Lamb, *Adolescent Well-Being in Cohabiting, Married, and Single-Parent Families*, 65 J. MARRIAGE & FAM. 876, 877–78, 890 (2003) (reporting that neither cohabitation nor marriage to a nonparent is associated with uniform advantage in behavior or academic success among teenagers living in single-mother families); Susan D. Stewart, *How the Birth of a Child Affects Involvement with Stepchildren*, 67 J. MARRIAGE & FAM. 461, 462 (2005) (summarizing research). Living with an unrelated adult poses risks to children. See Michael N. Stiffman et al., *Household Composition and Risk of Fatal Child Maltreatment*, 109 PEDIATRICS 615 (2002) (reporting that children residing in households with an unrelated adult were eight times more likely to die of maltreatment than children in households with two biological parents and that risk of maltreatment death was not increased for children living with a sole biological parent).

a high school diploma, and a quarter have no job. . . . [A]most half of them earned less than \$10,000 in the year before the birth.³⁴

However, despite these caveats, the evidence strongly suggests that the marital advantage is real, and that it persists across national, cultural, and socioeconomic boundaries.³⁵ Even in Scandinavia, which has the longest experience with cohabitation as a mainstream family form, demographers continue to find that marital childbearing is associated with much greater childhood stability,³⁶ smaller risks to youthful and adult well-being,³⁷ and

34. KATHRYN EDIN & MARIA KEFALAS, *PROMISES I CAN KEEP: WHY POOR WOMEN PUT MOTHERHOOD BEFORE MARRIAGE* 2 (2005). See also GREGORY ACS & SANDY NELSON, *SHOULD WE GET MARRIED IN THE MORNING? A PROFILE OF COHABITING COUPLES WITH CHILDREN* 12, tbl.2 (Urban Inst. Discussion Paper 04-01, 2004) (finding that cohabiting unmarried parents were significantly less likely to work, to be high-school dropouts, and to be under age twenty-five than married parents); ROBERT I. LERMAN, *IMPACTS OF MARITAL STATUS AND PARENTAL PRESENCE ON THE MATERIAL HARDSHIP OF FAMILIES WITH CHILDREN* 12 (Urban Institute, 2002) (finding that 70% of married, two-parent families, 54% of cohabiting two-parent families, and 48% of single-parent families had an adult with more education than a high-school diploma); CYNTHIA OSBORNE ET AL., *INSTABILITY IN FRAGILE FAMILIES: THE ROLE OF RACE-ETHNICITY, ECONOMICS, AND RELATIONSHIP QUALITY* 7 (CRCW Working Paper 2004-17FF, 2004) (finding that, in nationally representative sample, married parents reported almost twice the annual income of cohabitants and less than 20% of married fathers had less than a high-school diploma as compared to almost two-fifths of cohabiting fathers); Wendy D. Manning & Daniel T. Lichter, *Parental Cohabitation and Children's Economic Well-Being*, 58 J. MARRIAGE & FAM. 998 (1996) (finding that unmarried fathers earned about half of what married fathers earned in 1990); K.A. Musick, *Planned and Unplanned Childbearing Among Unmarried Women*, 64 J. MARRIAGE & FAM. 915 (2002) (reporting that level of education and socioeconomic status are significant predictors of nonmarital birth); George R.G. Clark & Robert P. Strauss, *Bell Curves and Babies: The Interaction Between Ability, Welfare, and Nonmarital Childbearing*, Proceedings of Annual Conference of the National Tax Association, 2000, <http://www.heinz.cmu.edu/wpapers/detail.jsp?sessionid=2370131110215112642?id=187> (finding significant association between nonmarital birth risk and scholastic achievement test scores).

35. See, e.g., Pamela J. Smock et al., *The Effect of Marriage and Divorce on Women's Economic Well-Being*, 64 AM. SOC. REV. 794, 809 (1999) ("the economic benefits of marriage are large, even above and beyond the characteristics of those who marry"); H.K. Kim & P.C. McKenry, *The Relationship Between Marriage and Psychological Well-Being—A Longitudinal Analysis*, 23 J. FAM. ISSUES 885 (2002) (data "confirmed the strong effects of marital status on psychological well-being, supporting the protection perspective," indicated that "the transition to cohabiting did not have the same beneficial effects as marriage for psychological well-being," and produced "weak and inconsistent" evidence of selection effects); Donna K. Ginther & Madeline Zavodny, *Is the Male Marriage Premium Due to Selection? The Effect of Shotgun Weddings on the Return to Marriage*, 14 J. POPUL. ECON. 313 (2001) ("at most 10% of the estimated marriage premium [in men's wages] is due to selection").

36. See An-Magritt Jensen & Sten-Erik Clausen, *Children and Family Dissolution in Norway: The Impact of Consensual Unions*, 10 CHILDHOOD 65 (2003) (finding that children of cohabiting parents run a much higher risk of dissolution compared to children in marital unions and that "this risk is not diminishing as cohabitation becomes more widespread"); Kathleen Kiernan, *Unmarried Cohabitation and Parenthood: Here to Stay? European Perspectives*, in *THE FUTURE OF THE FAMILY*, supra note 23, at 84 fig.3.6 (showing that 6% of Swedish marital unions and 25% of nonmarital unions dissolve within five years after the birth of a first child).

37. See Gunilla Ringback Weitoft et al., *Mortality, Severe Morbidity, and Injury in Children Living with Single Parents in Sweden: A Population-Based Study*, 361 LANCET 289

lower rates of divorce and nonmarital childbearing.³⁸ For example, in Sweden, where state policies “tend to view cohabitation as equal to marriage, and many of the regulations of marriage are applied to cohabiting relationships,”³⁹ cohabiting parents are more than four times as likely as married parents to separate before their first child turns five.⁴⁰ And despite an extraordinarily high level of public assistance to single parents—assistance that produces a child poverty rate of less than three percent⁴¹—single parenthood remains a serious risk factor for children. The most compelling study, which analyzed almost a million cases and took account of possibly confounding factors such as socioeconomic status and parental mental health, found that Swedish children in single-parent households showed significantly increased risks of “all adverse outcomes analyzed, including psychiatric disease, suicide or suicide attempt, injury, and addiction.”⁴² There is also evidence that, even after controlling for observable characteristics like education, academic test scores, and premarital pregnancy, marriage contributes significantly to living standards, “not only relative to single parents living alone but also compared to parents in cohabiting relationships and single parents living with other adult relatives.”⁴³ As family sociologist Paul Amato has put it, “the evidence

(2003); Jan O. Jonsson & Michael Gahler, *Family Dissolution, Family Reconstitution, and Children's Educational Careers: Recent Evidence for Sweden*, 34 *DEMOGRAPHY* 277, 287 (1997) (finding that even after controlling for all independent variables, children of divorced and separated parents and children living in reconstituted families have low school-continuation propensities compared to children living with both biological parents); Helen Hansagi et al., *Parental Divorce: Psychosocial Well-Being, Mental Health and Mortality During Youth and Young Adulthood: A Longitudinal Study of Swedish Conscripts*, 10 *EUR. J. PUB. HEALTH* 335 (2000) (reporting that in a group of Swedish conscripts, several indicators of low levels of well-being and mental illness, including alcoholism, were significantly correlated with parental divorce even after adjustment for antecedents and other factors). See also Taru H. Makikyro et al., *Hospital-Treated Psychiatric Disorders in Adults with a Single-Parent and Two-Parent Family Background: A 28-Year Follow-Up of the 1966 Northern Finland Cohort*, 37 *FAM. PROCESS* 335 (1998).

38. See Kathleen Kiernan, *Redrawing the Boundaries of Marriage*, 66 *J. MARRIAGE & FAM.* 980, 983 (2004).

39. See Kristen R. Heimdal & Sharon K. Houseknecht, *Cohabiting and Married Couples' Income Organization: Approaches in Sweden and the United States*, 65 *J. MARRIAGE & FAM.* 525, 527 (2003).

40. See Kiernan, *supra* note 28, at 84 fig.3.6.

41. See UNICEF, *A LEAGUE TABLE OF CHILD POVERTY IN RICH NATIONS* 4 fig.1 (Innocenti Report Card No. 1, 2000), <http://www.unicef-icdc.org/publications/pdf/repcard1e.pdf>.

42. Weitoft et al., *supra* note 37.

43. LERMAN, *supra* note 34, at 32. See also Adam Thomas & Isabel Sawhill, *For Love and Money? The Impact of Family Structure on Family Income*, 15 *FUTURE OF CHILD*. 57 (2005); OSBORNE ET AL., *supra* note 34 at 12–13 (CRCW Working Paper 2004-17FF, 2004) (finding in nationally representative study that even after controlling for the “mother’s characteristics, parents’ fertility history, the couple’s economic characteristics, and relationship quality, . . . [p]arents who are cohabiting at their child’s birth still have over twice the odds of separation as

consistently indicates that children with two happily and securely married parents have a statistical advantage over children raised in other family groups.” And “[b]ecause we all have an interest in the well-being of children, it is reasonable for social institutions (such as the state) to attempt to increase the proportion of children raised by married parents with satisfying and stable marriages.”⁴⁴

In sum, formal marriage is associated with a wide range of public and private benefits. These benefits support public policies designed to encourage formal registration of marital intentions and childbearing within formalized relationships.

III. Marital Decline

Despite the advantages associated with formal marriage, all across the industrialized world young adults are marrying later⁴⁵ and increasing numbers may not marry at all.⁴⁶ With the notable exceptions of Asia and southern Europe, the proportion of children born outside of marriage has also skyrocketed.⁴⁷

compared to parents who are married. . . .”); Sigle-Rushton & McLanahan, *supra* note 23, at 126–30, 130 (analyzing selection effects and finding that they “do not account for all the differences in children, families, and subsequent outcomes.”)

44. Paul Amato, *Tension Between Institutional and Individual Views of Marriage*, 66 J. MARRIAGE & FAM. 959, 962–63 (2004).

45. Between 1950 and 2002, the median age at first marriage increased for U.S. men by 4.1 years (from 22.8 to 26.9) and for women by 5 years (from 20.3 to 25.3). See <http://www.infoplease.com/ipa/A0005061.html> (citing U.S. census data). See also Kathleen Kiernan, *European Perspectives*, *supra* note 1, at 41 tbl.3.1 (reporting increase in age of first marriage in most European nations); J. Sean Curtin, *Japanese Marriage Trends in 2002: Later Unions and More Divorce Families*, Social Trends: Series No. 9, <http://unpan1.un.org/intradoc/groups/public/documents/APCITY/UNPAN016635.pdf> (reporting “all time high” in Japanese age at first marriage of twenty-seven for women and twenty-nine for men in 2002).

46. Between 1970 and 2002, the proportion of U.S. adults age 40–44 who reported that they had never been married increased among men from 4.9% to 16.7% and among women from 6.3% to 11.5%. See <http://www.infoplease.com/ipa/A0763219.html> (citing U.S. census data). See also U.S. BUREAU OF THE CENSUS, STATISTICAL ABSTRACT OF THE UNITED STATES 2001 59 tbl.68 (showing that, between 1950 and 1996, the U.S. marriage rate declined from 11.1 to 8.8 per 1000 population); *Marriages and Divorces in the EU (1960-95)*, <http://www.eurohealth.ie/newrep/socio.htm> (showing average decline, between 1960 and 1995, of 24% in marriage rate of fifteen European nations).

47. See Stephanie J. Ventura & Christine Bachrach, *Nonmarital Childbearing in the United States 1940–99*, 48 NAT’L VITAL STAT. REP. No. 16, http://www.cdc.gov/nchs/data/nvsr/nvsr48/nvsr48_16.pdf (reporting that 33.8% of U.S. births were nonmarital in 2002, compared to 3.8% in 1940); Timothy M. Smeeding et al., *The Challenge of Family System Changes for Research and Policy*, in *THE FUTURE OF THE FAMILY*, *supra* note 23, at 1, 8 fig.1.3 (showing increases in European nonmarital birth rates between 1960 and 2000). In the United States, the increase in nonmarital births reflects a large increase in premarital sex. The National Survey of Family Growth found that, in 1970, 40% of unmarried eighteen-year-old women said that they had engaged in sexual intercourse. By 1988, the proportion had risen to 70%. This trend has

The decline of marriage and marital childbearing is not evenly distributed across the population, however. College-educated women were once less likely to marry than others; this is no longer the case⁴⁸ and, at least in the United States, these well-educated women are equally or more likely to stay married than they were several decades ago.⁴⁹ In the United States and, to a lesser extent, some European nations, nonmarital fertility is also concentrated among the poorly educated.⁵⁰ Because of these divergent trends, in the mid-1990s, only 10% of the children of U.S. college-educated women lived in single-parent households—a percentage that has not increased since 1980—as compared with more than 40% of children whose mothers lacked a high-school diploma.⁵¹

Marital and reproductive behavior also diverges sharply by race and ethnicity. In the United States, the decline of marriage has been much

reversed in recent years, and in 1995 the proportion of eighteen-year-old women who reported having had sex fell to 63%. See Douglas Besharov & Karen Gardiner, *Trends in Teen Sexual Behavior*, 19 CHILD & YOUTH SERV. REV. 328 (1997), http://www.aei.org/publications/pubID.17756/pub_detail.asp.

48. See Joshua R. Goldstein & Catherine T. Kenney, *Marriage Delayed or Marriage Forgone? New Cohort Forecasts of First Marriage for U.S. Women*, 66 AM. SOC. REV. 506 (2001).

49. See David T. Ellwood & Christopher Jencks, *The Spread of Single-Parent Families in the United States Since 1960*, in THE FUTURE OF THE FAMILY, *supra* note 23, at 25, 39–40 fig.2.2, 42–43 fig.2.11 (reporting marriage as equally likely); David T. Ellwood & Christopher Jencks, *The Uneven Spread of Single Parent Families: What Do We Know? Where Do We Look for Answers?*, in SOC. INEQUALITY 3, 13–14 figs.1.4 & 1.5 (Kathryn M. Neckerman eds., 2004) (showing historical data on single motherhood by education level) [hereinafter Ellwood & Jencks, *Uneven Spread*]; Dan Hurley, *Divorce Rate: It's Not as High as You Think*, N.Y. TIMES, Apr. 19, 2005, at D7 (reporting unpublished data showing that the ten-year divorce rate for college graduates “has plummeted to just over 16% of those married between 1990 and 1994 from 27% of those married between 1975 and 1979”). See also Steven P. Martin, *Women's Education and Family Timing*, in SOC. INEQUALITY, *supra* at 79, 94, tbl.2.2 (showing, between 1970 and 1990, 1.8 year mean decline in age at first birth for U.S. women without high-school diploma and 6.3 year gain for women with a master's or professional degree).

50. See Kathleen Kiernan, *European Perspectives on Nonmarital Childbearing*, in OUT OF WEDLOCK: CAUSES AND CONSEQUENCES OF NONMARITAL FERTILITY, 77, 90 tbl.3.5 (Lawrence L. Wu & Barbara Wolfe eds., 2004) (showing higher proportion of nonmarital first births to non-graduates in four of nine European nations); Ellwood & Jencks, *supra* note 49, at 41–42 fig.2.9 (reporting that about a quarter of U.S. women without a high-school degree have had children but never married; only about 3% of college-educated women have done so. See also Larry Bumpass & H.H. Lu, *Trends in Cohabitation and Implications for Children's Family Contexts in the United States*, 54 POPUL. STUD. 29 (2000) (reporting that U.S. college-educated women produce less than 5% of U.S. nonmarital births); K.A. Musick, *Planned and Unplanned Childbearing Among Unmarried Women*, 64 J. MARRIAGE & FAM. 915 (2002) (reporting that education level and socioeconomic status are among the best predictors of nonmarital birth).

51. See Ellwood & Jencks, *supra* note 49, at 36–39 fig.2.7. About 60% of marriages of women without high-school degrees and 33% of marriages of college graduates end in separation or divorce. See Kelly Raley & Larry Bumpass, *The Topography of the Divorce Plateau: Levels and Trends in Union Stability in the United States after 1980*, 8 DEMOGRAPHIC RES. 245 (2003).

more pronounced among black than white Americans. Blacks have long had a high rate of marital disruption,⁵² but they are now much less likely to marry, too. Slightly more than two-thirds of black women born between 1960 and 1964 married by age forty, compared to eighty-seven percent of those born two decades earlier and eighty-nine percent of non-Hispanic white women.⁵³ Conversely, sixty-eight percent of black children are now born outside of marriage, compared to twenty-eight percent of non-Hispanic white children.⁵⁴ Black cohabitants are also much less likely than white cohabitants to marry after their child's birth or even to remain a couple.⁵⁵ As a result of these various trends, black children spend considerably more time than white children in single-parent families. Indeed, the chance of a black child growing up with both parents was higher during slavery than it is today.⁵⁶

Despite these socioeconomic and ethnic differences—explored at greater length in Professor Wax's contribution to this symposium—marriage remains, at least in the United States, an important life goal that is shared by virtually all sectors of the population. Overwhelmingly, young Americans assert that they would be “more economically secure, have more emotional security, a better sex life, and a higher standard of living” if they were married.⁵⁷ They report that they plan to marry themselves and

52. See ORLANDO PATTERSON, *RITUALS OF BLOOD* 60–62 (1998) (showing marital disruption rates by ethnicity); JAMES Q. WILSON, *THE MARRIAGE PROBLEM: HOW OUR CULTURE HAS WEAKENED FAMILIES* (2002) (reporting historical data on African-American marital disruption rates and noting that in earlier periods some unmarried mothers “reported themselves as widows in order to explain why they had a child but not a husband”); Ellwood & Jencks, *supra* note 49, at 42 fig.2.10 (showing marital disruption rates of mothers by ethnicity); Martin, *supra* note 49 at, figs.2.17 & 2.18 (showing marriage and birth rates for black women between 1940 and 1995).

53. See Ellwood & Jencks, *supra* note 49, at 40–41 fig.2.8 (reporting that, at age 40, 89% of white and 68% of black women were married and 80% of white and 85% of black women had had children).

54. See U. S. BUREAU OF THE CENSUS, *STATISTICAL ABSTRACT OF THE UNITED STATES* 2004–05 60, tbl.71. Variation by race is even larger for first births; 74% of the first births of non-Hispanic white women are marital, as compared to 23% of first births to black women. See ANJANI CHANDRA ET AL., *FERTILITY, FAMILY PLANNING, AND REPRODUCTIVE HEALTH OF U.S. WOMEN: DATA FROM THE 2002 NATIONAL SURVEY OF FAMILY GROWTH* fig.5 (Vital & Health Statistics Series 23 No. 25, 2005), http://www.cdc.gov/nchs/data/series/sr_23/sr23_025.pdf.

55. See SARA MCLANAHAN, *FRAGILE FAMILIES AND THE MARRIAGE AGENDA* 7 & tbl.5 (Ctr. Res. on Child Well-Being Working Paper 03-16-FF, 2003) (finding in nationally representative sample, that 21% of cohabiting couples and 11% of visiting but “romantically involved” couples had married by the time of their child's third birthday, while 10% of married, 38% of cohabiting, and 51% of “visiting” couples had separated by this birthday.) See also Cynthia Osborne, *Marriage Following the Birth of a Child Among Cohabiting and Visiting Parents*, 67 J. MARRIAGE & FAM. 14 (2005) (reporting that different variables predict marriage for visitors and cohabitants).

56. See ANDREW J. CHERLIN, *MARRIAGE, DIVORCE, REMARRIAGE* 110 (rev. ed. 1992).

57. See Kelly Raley, *Recent Trends and Differentials in Marriage and Cohabitation*, in *THE*

say that a good marriage is an important component of a good life.⁵⁸ This enthusiasm for marriage has not declined. Annual surveys of high school seniors conducted since the late 1970s show virtually identical percentages reporting that “having a good marriage and family life” is extremely important; the proportion of young men reporting that they plan to marry has actually increased.⁵⁹ Support for marriage is high within all ethnic and racial groups,⁶⁰ and both cohabitants⁶¹ and unmarried parents⁶² seem to be just as enthusiastic as the general population. Support for marriage is not as high outside the United States, but the perception that marriage is an important social institution still seems to be shared by a substantial majority of adults.⁶³

TIES THAT BIND, *supra* note 1, at 20, 34 (reporting that most adults age twenty to twenty-nine say that they would be happier, “more economically secure, have more emotional security, a better sex life, and a higher standard of living if they were married”); Arland Thornton & L. Young-DeMarco, *Four Decades of Trends in Attitudes toward Family Issues in the United States: The 1960s Through the 1990s*, 63 J. MARRIAGE & FAM. 1009 (2001) (concluding that young Americans continue to favor marriage).

58. See Thornton & Young-DeMarco, *supra* note 57 (stating that about 80% of young women and 78% of young men report that they plan to marry).

59. *Id.* See also William G. Axinn & Arland Thornton, *The Transformation in the Meaning of Marriage*, in THE TIES THAT BIND, *supra* note 1, at 147, 151–52 tbl.8.1 (reporting survey data from 1970s to 90s on attitudes toward marriage).

60. See M. Belinda Tucker, *Marital Values and Expectations in Context*, in THE TIES THAT BIND, *supra* note 1, at 177–80 & tbl.9.3 (reporting marital value means by gender and ethnicity).

61. See John D. Cunningham & John K. Antill, *Cohabitation and Marriage: Retrospective and Predictive Comparisons*, 11 J. SOC. & PERS. RELATIONSHIPS 77 (1994); Meredith J. Porter et al., *Cohabitators' Prerequisites for Marriage: Individual, Relationship, and Sociocultural Influences* (Bowling Green State Univ. Working Paper 2004-09) (finding that among surveyed cohabitants, “cohabitation is not viewed as an alternative to marriage [and] . . . [o]nly a very small percentage has no desires or plans to ever marry.”) See also Andrew J. Cherlin, *Toward a New Home Socioeconomics of Union Formation*, in THE TIES THAT BIND, *supra* note 1, at 135 (“The typically short durations in the United States, along with expressed preferences for marriage, suggest that marriage is still the goal for most young adults and cohabitation is still seen as an intermediate status.”)

62. See GREGORY ACS & HEATHER KOBALL, TANF AND THE STATUS OF TEEN MOTHERS UNDER AGE 17 fig.7 (Urban Inst. Series A, No. A-62, 2003) http://www.urban.org/UploadedPDF/310796_A-62.pdf (reporting that over 80% of unmarried mothers and 90% of unmarried fathers agreed with the statement “marriage is better for children” and that a majority said that their chances of marriage were “good or almost certain”); CHRISTINA GIBSON-DAVIS ET AL., HIGH HOPES BUT EVEN HIGHER EXPECTATIONS: THE RETREAT FROM MARRIAGE AMONG LOW-INCOME COUPLES tbl.3 (Ctr. Research Child Welfare Working Paper 03-06-ff, 2003) (reporting that, in nationally representative Fragile Families survey, 79% of unmarried mothers and 84% of unmarried fathers living together at child’s birth say that there is at least a “good or certain” chance that they will marry); Kathryn Edin et al., *A Peek Inside the Black Box: What Marriage Means for Poor Unmarried Parents*, 66 J. MARRIAGE & FAM. 1007, 1010 (2004) (reporting data from Fragile Families Study showing that two-thirds of new unmarried mothers and three-quarters of new unmarried fathers agreed with the statement “marriage is better for children”).

63. See Andrew Cherlin, *American Marriage in the Early Twenty-First Century*, 15 FUTURE OF CHILD. 33 (2005) (reporting that in a World Values Survey conducted between 1999 and 2001, only 10% of adult Americans agreed with the statement, “Marriage is an outdated insti-

IV. The Determinants of Marital Decline

If marriage remains an important life goal, an obvious question is why formal marriage is in decline. We know that marital and childbearing behavior has undergone similar transformations in the past. For example, family historian Lawrence Stone reports that, in England, between 1690 and 1760 the “old moral controls on bundling” deteriorated, resulting in a tripling of the nonmarital portion of first births and an “even more startling explosion of pre-nuptial conceptions.”

By the late eighteenth century consummation and conception normally preceded—and indeed precipitated—marriage, as shown by the fact that a third of all brides were pregnant on their wedding-day, and over half of all first births were conceived out of wedlock.⁶⁴

But why did controls on “bundling” decline during the eighteenth century? Why did they revive in the nineteenth? And why have they again declined in recent years?

Looking at recent developments, family sociologists have noted that, at least in the United States, the meaning of marriage seems to have shifted, with marriage increasingly viewed as a marker of achievement. Andrew Cherlin, for example, argues that marriage “has evolved from a marker of conformity to a marker of prestige,”⁶⁵ Pamela Smock urges that today’s marriage “signifies that one is no longer struggling economically,”⁶⁶ and Maria Kefalas et al. find that “[i]n years past, being married meant you were an adult, [but] today you have to be an adult to be married.”⁶⁷

In support of this attitudinal shift, Cherlin and Smock cite survey evidence showing overwhelming support for the proposition “[i]t is extremely important for you to be economically set before you get married”⁶⁸ and Kefalas et al. offer detailed interview data evidencing similar attitudes toward marriage. None of these experts offers comparative data, and the

tution,” as compared with 22% of Canadians, 26% of British, and 36% of French adults, and that support for marriage was highest in the U.S. and Iceland).

64. LAWRENCE STONE, *UNCERTAIN UNIONS AND BROKEN LIVES: INTIMATE AND REVEALING ACCOUNTS OF MARRIAGE AND DIVORCE IN ENGLAND 20* (1995).

65. Andrew J. Cherlin, *The Deinstitutionalization of American Marriage*, 66 J. MARRIAGE & FAM. 848, 855 (2004).

66. Pamela J. Smock, *The Wax and Wane of Marriage: Prospects for Marriage in the 21st Century*, 66 J. MARRIAGE & FAM. 966, 968 (2004) [hereinafter Smock, *Wax and Wane*]. See also Pamela J. Smock et al., “*Everything’s There Except Money*”: *How Money Shapes Decisions to Marry Among Cohabitants*, 67 J. MARRIAGE & FAM. 680 (2005).

67. Maria Kefalas et al., *Marriage Is More Than Being Together: The Meaning of Marriage Among Young Adults in the United States*, Network on Transitions to Adulthood Research Network Working Paper, 2005. See also Barlow & James, *supra* note 1, at 158 (reporting that in interviews with U.K. cohabitants “the cost of a ‘proper wedding’” was “commonly” noted as a “reason for choosing to cohabit rather than marry.”)

68. Cherlin, *supra* note 65, at 856; Smock, *supra* note 66, at 968–69.

capacity to support a family has long been a factor in male marriage decision-making. But assuming that there has been a significant attitudinal shift, the question remains: Why?

One set of explanations relies on economic theory. Professor Gary Becker's path-breaking economic model of marriage posits benefits from marital role specialization much like those that flow from international trade; it thus predicts that factors that diminish the incentive to specialize, for example a convergence in male and female wages, will produce diminished gains from marriage and a lower marriage rate.⁶⁹ Some economists, expanding on Becker's theory, have posited additional economic gains from marriage that flow from its potential for pooling risk and raising living standards through joint consumption of shared goods.⁷⁰ Economic models also emphasize the importance of sex ratios: if women are in relatively short supply, the models predict a higher marriage rate; if men are in short supply, they predict a lower marriage rate.⁷¹ Finally, the models predict that the availability of economic support, like public assistance from outside the family, will make marriage less attractive and thus reduce the marriage rate within affected population groups.⁷²

Empirical researchers have charted many of the correlations predicted by economic theory. A number of studies have shown that higher male earnings and income prospects are positively associated with marriage,⁷³ and there is evidence that low ratios of men to women are indeed correlated with low marriage rates.⁷⁴ Researchers have also consistently found that marriage rates tend to decline during periods of economic hardship that drive down employment and earnings, while divorce rates increase.⁷⁵

69. See GARY S. BECKER, *A TREATISE ON THE FAMILY* 14–37 (1981). See also CASPER & BIANCHI, *supra* note 21, at xxvi–xxviii (summarizing economic theories); Ellwood & Jencks, *supra* note 49, at 45 (same).

70. See Robert A. Moffitt, *Female Wages, Male Wages, and the Economic Model of Marriage: The Basic Evidence*, in *THE TIES THAT BIND*, *supra* note 1, at 302, 304; Yoram Weiss, *The Formation and Dissolution of Families: Why Marry? Who Marries Whom? And What Happens Upon Divorce?*, in *HANDBOOK OF POPULATION AND FAMILY ECONOMICS* (Mark R. Rosenzweig & Oded Stark eds., 1997).

71. See SHOSHANA GROSSBARD-SHECHTMAN, *ON THE ECONOMICS OF MARRIAGE: A THEORY OF MARRIAGE, LABOR, AND DIVORCE* 62–63, 69–70, 87–101 (1993); Ellwood & Jencks, *supra* note 49, at 45.

72. See Moffitt, *supra* note 70, at 305. Economists do not agree on whether these economic benefits predict more marriage at lower or higher income levels.

73. See GROSSBARD-SHECHTMAN, *supra* note 71, at 66–67 (summarizing studies); Smock et al., *supra* note 66, at 682–83 tbl.1 (listing studies); David T. Ellwood & Christopher Jencks, *The Uneven Spread of Single Parent Families: What Do We Know? Where Do We Look for Answers*, in *SOC. INEQUALITY* (Kathryn M. Neckerman ed., 2004) (summarizing studies).

74. See GROSSBARD-SHECHTMAN, *supra* note 71, at 91–101 (summarizing studies); Ellwood & Jencks, *The Uneven Spread of Single Parent Families*, *supra* note 73 (same).

75. See Ellwood & Jencks, *The Uneven Spread of Single Parent Families*, *supra* note 73, (summarizing research); Lynn White & Stacy J. Rogers, *Economic Circumstances and Family*

Couples themselves also describe economic factors as important considerations in the decision to marry. In the interviews conducted by Kefalas et al., financial problems were frequently mentioned as impediments to formal marriage. As one interviewee put it,

Marriage is something you earn . . . If [she] graduates and [I] graduate, you can start working and we can afford [a wedding] and that's when you get married. It's not just cause we have a child and all of a sudden we need to go out and do it.⁷⁶

Similarly, in a British survey, a number of cohabitants described “the cost of a ‘proper wedding’” as a factor that had deterred them from marrying.⁷⁷

Economic theory cannot explain the magnitude of the recent decline in marriage, however. Researchers who measured the impact of changing economic conditions on the U.S. marriage rate between 1986 and 1997 found that wage and employment shifts explained only about a third of the decline during that period.⁷⁸ The U.S. retreat from marriage also continued throughout the 1990s, despite dramatic increases in economic growth.⁷⁹ And, contrary to economic theory, the evidence on both the impact of women's economic opportunities and external supports like public assistance is ambiguous: well-educated women with larger economic opportunities appear to marry later than their less advantaged counterparts, but they do not seem less likely to marry over the life course.⁸⁰ Nor does public assistance appear to have a consistent impact on marital behavior.⁸¹

Outcomes: A Review of the 1990s, 62 J. MARRIAGE & FAM. 1035 (2000) (same).

76. Kefalas et al., *supra* note 67.

77. See Barlow & James, *supra* note 1.

78. See Daniel T. Lichter et al., *Economic Restructuring and the Retreat from Marriage*, 31 SOC. SCI. RES. 230 (2002).

79. See STATISTICAL ABSTRACT, *supra* note 46, at 88 tbl.113 (showing U.S. marriage rate of 9.8 per 1000 in 1990 and 8.2 per 1000 in 2001).

80. See CASPER & BIANCHI, *supra* note 21, at 273–74 (summarizing evidence); Ellwood & Jencks, *The Uneven Spread of Single Parent Families*, *supra* note 49 (same); M.M. Sweeney, *Two Decades of Family Change: The Shifting Economic Foundations of Marriage*, 67 AM. SOC. REV. 132 (2002). As Professor Wax explains in her contribution to this symposium, the “technology shock” theory propounded by George Akerlof et al., *An Analysis of Out-of-Wedlock Childbearing in the United States*, 111 Q. J. ECON. 279 (1996) fails to explain why the decline of marriage is disproportionately concentrated in some racial and ethnic groups. It also fails to explain the significant cross-national variation in nonmarital birth rates.

81. See Ellwood & Jencks, *The Uneven Spread of Single-Parent Families*, *supra* note 73, at 47–51 (summarizing literature); LIBERTAD GONZALEZ, THE EFFECT OF BENEFITS ON SINGLE MOTHERHOOD IN EUROPE: EVIDENCE FROM THE ECHP (IZA Conference on Women & Labor Market in Europe (Dec. 2004), http://www.iza.org/conference_files/wlme2004/gonzalez_11291.pdf (reporting significant positive effect of public benefits on single motherhood and headship in Western Europe); Marcy Carlson et al., *The Effects of Welfare and Child Support Policies on Union Formation*, 23 POPUL. RES. & POL'Y REV. 513 (2004) (finding that higher welfare benefits discourage couples from breaking up, while strong child support enforcement reduces the chances that unmarried parents will marry); E. Michael Foster & Saul D. Hoffman, *The*

Economic theory also suffers from methodological limitations that curtail its explanatory value. Existing economic models cannot predict either the magnitude of income effects or the interaction between economic variables. And economic theorists have largely failed to offer an explanation for the uncoupling of marriage and parenting, perhaps the most dramatic and notable of recent demographic trends.⁸² As a result of these various limitations, we can point to changing income and employment patterns as sources of the decline in marriage and marital fertility, but we cannot use these patterns to predict future trends or even to fully explain current outcomes.

Of course, economic analysis is not the only way of explaining the decline of marriage. Another set of explanations stresses new legal and cultural norms—legal abortion, no-fault divorce, the abandonment of legal disabilities associated with illegitimacy, greater tolerance of pre- and nonmarital sexuality and childbearing—as a source of marriage’s decline.⁸³ Certainly these shifts are associated with vastly altered attitudes toward sexual and reproductive behavior;⁸⁴ it would be surprising if they did not have some impact on marriage behavior as well.

However, cultural explanations are no more capable than economic theory of fully explaining the decline in marriage. Like economic theory, cultural explanations of marriage behavior can do little more than predict the direction of change; they do not even purport to explain how cultural variables interact or the magnitude of a culturally induced behavioral shift.⁸⁵

Cultural explanations are also difficult to test empirically. For example, researchers have been debating the impact of no-fault divorce grounds on divorce rates for the past generation. It is clear that divorce rates rose following the introduction of no-fault in the late 1960s and 1970s. It is also clear that divorce rates had been rising for the entire century that preceded

Young and the Not Quite So Young: Age Variation in the Impact of AFDC Benefits on Nonmarital Childbearing, in *OUT OF WEDLOCK*, *supra* note 50 at 173, 194–96 (concluding that variation in models depends on whether “state fixed effects” are included in analysis).

82. See Ellwood & Jencks, *supra* note 49, at 48–49; V. Joseph Hotz et al., *The Economics of Fertility in Developed Countries*, in *HANDBOOK OF POPULATION AND FAMILY ECONOMICS*, *supra* note 70; Valerie K. Oppenheimer, *Women’s Employment and the Gain to Marriage: The Specializing and Trading Model*, 23 *ANN. REV. SOCIOLOGY* 431 (1997).

83. See Ellwood & Jencks, *supra* note 49, at 52–56 (summarizing theories); Ellwood & Jencks, *The Uneven Spread*, *supra* note 73, at 51–60 (same).

84. See Arland Thornton, *Changing Attitudes Toward Family Issues in the United States*, 51 *J. MARRIAGE & FAM.* 873 (1989) (reporting that in a 1965 survey, 69% of women under age 30 said that it was “always” or “almost always” wrong if a woman “has intimate relations with a man to whom she is engaged and intends to marry”; by 1974, only 24% said it was wrong “to have sex relations before marriage.” See also CASPER & BIANCHI, *supra* note 21, at 42–43; Axinn & Thornton, *supra* note 59, at 148–50).

85. See Smock, *Wax and Wane*, *supra* note 66, at 967 (describing impossibility of empirically testing causal role of social change in producing retreat from marriage).

ed this legal innovation.⁸⁶ Did the advent of no-fault contribute significantly to the preexisting trend? Most observers have found that it did in the short-run, but over the long run there is no agreement whatsoever; some researchers argue in favor of independent effects, whereas others argue that divorce reforms had no long-term impact and were themselves the product of a longer-term cultural shift.⁸⁷

The no-fault divorce example is not unique; legal and cultural norms often change rapidly and in tandem, just as they did during the 1960s and 1970s. Cultural theories offer no method of determining which norms drive change and which simply follow the trend.⁸⁸ Nor are they capable of establishing the timing and duration of a culturally induced behavioral shift. For example, U.S. attitudes toward marriage and divorce changed sharply between the mid-60s and mid-70s, but since then have varied hardly at all.⁸⁹ It is not obvious that an attitudinal shift ending in the 1970s had the capacity to significantly affect either the continued rise of divorce rates through the 1980s or the ongoing rise of cohabitation, which continues even today on an upward course.

Looking at population subgroups does not seem to expand the explanatory power of either economic or cultural theories. Demographers have been no more successful in explaining the extraordinarily low marriage rate of black Americans than they have been in explaining the general decline of marriage. Again, economic factors have some explanatory power and considerable intuitive appeal,⁹⁰ almost a quarter of prime-age

86. Ellwood & Jencks, *supra* note 49.

87. Compare Norval Glenn, *Further Discussion of the Effects of No-Fault Divorce on Divorce Rates*, 61 J. MARRIAGE & FAM. 800 (1999), and Ira Ellman & Sharon Lohr, *Dissolving the Relationship Between Divorce Rates and Divorce Laws*, 18 INT'L J. ECON. 341 (1998), with Douglas W. Allen, *The Impact of Legal Reforms on Marriage and Divorce*, in THE LAW AND ECONOMICS OF MARRIAGE AND DIVORCE 191 (Antony W. Dnes & Robert Rowthorn eds., 2002), and Rogers et al., *Did No-Fault Divorce Legislation Matter? Definitely Yes and Sometimes No*, 61 J. MARRIAGE & FAM. 803 (1999). See also Justin Wolfers, *Did Unilateral Divorce Laws Raise Divorce Rates? A Reconciliation and New Results*, 66 AM. ECON. REV. 1802 (2006) (concluding that the divide in the no-fault divorce research reflects a failure to jointly consider the dynamic response of divorce rates to a "policy shock" and finding that, with this effect considered, liberalized divorce laws caused a discernible rise in divorce rates for about a decade, "with much of this effect concentrated in the first few years," that the data do not permit rejection of "either moderately positive or moderately negative [long-term] changes," and that none of the estimates "suggest that unilateral divorce laws can explain much of the rise in the divorce rate over the past half century").

88. See Smock, *Wax and Wane*, *supra* note 66, at 967 (explaining that cultural explanations of marriage behavior "can probably never be adequately tested as causal forces").

89. See Axinn & Thornton, *supra* note 59.

90. The economic explanations rely heavily on the relatively low employment rate and poor economic prospects of African-American men. For example, Professor William Julius Wilson, has argued that women seek husbands among the group of men with good economic prospects, and that shifts in job-skill requirements and pay has produced a dearth of good-husband mate-

black men are unemployed throughout the year⁹¹ and another twelve percent are incarcerated.⁹² But economic models have in fact proven less capable of explaining marital trends among black than white Americans:⁹³ male earnings appear to have a larger effect on the marriage decisions of whites than on blacks;⁹⁴ some studies have also found that increases in female earnings are associated with declines in marriage for white, but not black females.⁹⁵ Cultural explanations are also incapable of fully explaining the racial divide in marriage behavior. Most of the cultural models posit blacks' low rate of marital success and high rate of nonmarital child-bearing as part of the legacy of slavery. Black scholar W.E.B. Du Bois proposed this theory at the turn of the century;⁹⁶ although its adoption by Daniel Patrick Moynihan in the 1960s spurred considerable controversy,⁹⁷ it has been revived and reinvigorated in recent years by Professor Orlando Patterson and others.⁹⁸ The Du Bois–Moynihan hypothesis relies on the fact that slavery often prevented a man from being an effective husband and father; it posits the development of a “uterine society” in which men were emasculated and children, women, and even men predominantly turned to mothers and other female relatives for help.⁹⁹ Like economic the-

rial among African-American men. See WILLIAM JULIUS WILSON, *WHEN WORK DISAPPEARS: THE WORLD OF THE NEW URBAN POOR* (1996).

91. See ANDREW SUM ET AL., *TRENDS IN BLACK MALE JOBLESSNESS AND YEAR-ROUND IDLENESS: AN EMPLOYMENT CRISIS IGNORED* 15–16, ch. 6 (Northeastern Univ. Ctr. Labor Market Studies, 2004), http://www.nlc.org/ASSETS/223BA7C42D964A32A2CAC31E28DDF AFC/IYEF_DY_Black_Males_Report.pdf. See generally PROSPERITY FOR ALL?: *THE ECONOMIC BOOM AND AFRICAN AMERICANS* (Robert Cherry & William M. Rodgers III eds., 2000).

92. See *Nation's Inmate Population Increased 2.3 Percent Last Year*, N.Y. TIMES, Apr. 25, 2006, at A14.

93. See Moffitt, *supra* note 70. See also Daniel Lichter et al., *Race and the Retreat from Marriage: A Shortage of Marriageable Men?*, 57 AM. SOC. REV. 781 (1992) (finding that altering sex ratios so as to give black women the same number of potential partners as white women would increase marriage among African-Americans by about 25%). See also Francine M. Blau et al., *Understanding Young Women's Marriage Decisions*, 53 INDUS. & LAB. REL. REV. 624 (2002); Megan M. Sweeney, *Two Decades of Family Change: The Shifting Economic Foundations of Marriage*, 67 AM. SOC. REV. 132 (2002).

94. See also PATTERSON, *supra* note 52, at 63 (summarizing evidence and concluding that economic explanations do not “adequately account[] for the low and declining marriage rates [of Afro-Americans]”).

95. See Moffitt, *supra* note 70, at 317; W.A. Darity & S.L. Myers, *Family Structure and the Marginalization of Black Men: Policy Implications*, in *THE DECLINE IN MARRIAGE AMONG AFRICAN AMERICANS* 263 (M.B. Tucker & C. Mitchell-Kernan eds. 1995).

96. See W.E.B. DUBOIS, *THE NEGRO-AMERICAN FAMILY* (1908).

97. See LEE RAINWATER & WILLIAM L. YANCEY, *THE MOYNIHAN REPORT AND THE POLITICS OF CONTROVERSY* (1967).

98. See PATTERSON, *supra* note 52, at 25–53; WILSON, *supra* note 90, at 107–29.

99. Male slaves were often forced to live apart from their families; even when living with his family, a man could offer his wife and children “no security, no status, no name, no identity.” PATTERSON, *supra* note 52, at 32–34.

ory, the slavery hypothesis has some explanatory power: nonmarriage and nonmarital birth have been prominent in the African-American community throughout the census reports, far more prominent than among the general population or even other relatively poor ethnic groups; nonmarriage and nonmarital birth are also extremely common among African-American slave descendants in the Caribbean.¹⁰⁰ But assuming that the legacy of slavery has played some role in producing black Americans' low marriage and high nonmarital birth rates, we cannot assess the magnitude of that role. Indeed, over the past fifty years, nonmarital births have actually increased far more dramatically among whites than among blacks.¹⁰¹ The trend toward nonmarriage, cohabitation, and nonmarital birth is also visible across most of the developed world.

One reason why neither economic nor cultural explanations can fully explain current trends is simply that economic and cultural factors appear to interact. Indeed, the evidence suggests that each of these factors has the potential to reinforce—or diminish—the power of the other. Consider Matt, a twenty-seven-year-old cohabiting construction worker whose remarks about marriage illustrate, in the view of the sociologists who interviewed him, both the ways in which cultural schemas “sometimes contradict each other” and the interaction between cultural and economic variables. Two months after “Matt” met “Kate,” they began cohabiting because Matt needed a place to stay:

R: I had my own apartment, and then my lease was up and I didn't want to sign a new lease because I knew I was going to Wisconsin, so she was like, “Well, you can stay at my mom's until you go.” And I was like, “OK.”

I: Um, okay. How'd you come to the decision for her to move with you?

R: Um, just fell in love, and said, you know, “Come with me,” and that was kind of cool that she did.¹⁰²

In the researchers' view, “Matt's case . . . illustrates how financial resources and schema about required economic underpinnings of marriage and the male provider role interact to shape behaviors. . .” Moreover,

At one and the same time, Matt is in love with Kate and thus wishes to marry her while simultaneously expressing that he is comfortable, in no hurry, and

100. *Id.* at 60–62 (showing marital disruption rates by ethnicity); WILSON, *supra* note 90, at 109–112, 114–15.

101. See Daniel P. Moynihan, *The Dahrendorf Inversion and the Twilight of the Family: A Challenge to the Conference*, in *THE FUTURE OF THE FAMILY*, *supra* note 23, at xiii, xvii (reporting that between 1960 and 2002, black nonmarital births increased from 24% to 69% of total births (283%) while white nonmarital births increased from 3% to 23% (766%)).

102. Pamela J. Smock et al., *Heterosexual Cohabitation in the United States: Motives for Living Together Among Young Men and Women* 33–34, Bowling Green State Univ. Working Paper 06-10 (2006).

that marriage is “just a piece of paper” and really the same as cohabitation. But he also invokes a masculine schema that one should propose to the woman one is living with, and references masculine scripts about the advantage of the lower commitment required in cohabitation compared to marriage and the curtailed freedom associated with living with a romantic partner.¹⁰³

Matt’s confused explanations “demonstrate[] how people draw on fragments of cultural schemas that sometimes contradict each other when accounting for and making sense of their situations.”¹⁰⁴ Matt’s confused explanations also suggest that economic and cultural forces are deeply and ineluctably intertwined.

Because individual attitudes and behavior are compounded of a murky mix of economic and cultural factors, so are those of larger groups and geographic regions. Consider the fascinating case of Quebec, where the marriage rate is about half that of the other Canadian provinces¹⁰⁵ and the proportion of adults living in nonmarital relationships double the proportion in the rest of Canada.¹⁰⁶ Indeed, the cohabitation rate in Quebec is virtually identical to that of Sweden, where cohabitation has long been culturally accepted and which has long had a cohabitation rate near the top of the charts.¹⁰⁷ A half century ago, this pattern was quite different. Indeed, Quebec’s marriage rate at that time was higher and its divorce rate lower than the Canadian norm.¹⁰⁸

Varying economic conditions probably explain some of this large divergence. Quebec has historically had a high unemployment rate and duration compared to most of the other Canadian provinces;¹⁰⁹ the Quebec unemployment rate also rose more than 120% between 1966 and 1981,¹¹⁰

103. *Id.* at 35–36.

104. *Id.* at 35.

105. See Statistics Canada, 2003 Marriage Rates, <http://www.statcan.ca/Daily/English/070117/d070117a.htm> (showing marriage rates of 2.9 per 1000 population in Quebec and rates of 4.9 (Manitoba) or higher in all other Canadian provinces except the frontier provinces of Nunavut and Northwest Territories).

106. See Rejean Lachapelle, *The High Prevalence of Cohabitation Among Franco-phones: Some Implications for Exogamous Couples*, paper presented at 2007 annual meeting of the Canadian Population Society (2007); Benoit Laplante, *The Rise of Cohabitation in Quebec: Power of Religion and Power Over Religion*, 31 CAN. J. SOC. 1 (2006).

107. See Lachapelle, *supra* note 106 (reporting that 29.8% of all Quebec couples were cohabitants in 2001, and that 30% of all Swedish couples were cohabitants in 2000).

108. See Celine Le Bourdais & Nicole Maril-Gratton, *Family Transformations Across the Canadian/American Border: When the Laggard Becomes the Leader*, 28 J. COMP. FAM. STUD. 415 (1996).

109. See 2 B.C. MINISTRY OF SOC. & ECON. DEV., HOMELESSNESS: CAUSES AND EFFECTS 85 fig.3 (2006), http://www.housing.gov.bc.ca/housing/homeless/Vol2_Ch7.pdf (showing unemployment rates by province for 1988–98).

110. See Hugues J. Cormier & Gerald L. Klerman, *Unemployment and Male–Female Labor Force Participation as Determinants of Changing Suicide Rates of Males and Females in Quebec*, 20 SOC. PSYCH. & EPIDEMIOLOGY 109 (1984).

the period in which the marriage rate began to decline sharply. Researchers have also found that Quebec's high unemployment rate is significantly linked to its comparatively high suicide rate.¹¹¹

However, Quebec's current occupational distribution, family income, and dependency ratios are comparable or better than those of neighboring provinces, New Brunswick and Nova Scotia,¹¹² whereas the marriage rate of these provinces is 1.8 times higher than that of Quebec.¹¹³ Some demographers have thus argued that the primary explanation for Quebec's low marriage rate is cultural, more specifically its citizens' attitude toward religion:

[T]he rise of cohabitation [and decline of marriage] in Quebec can be explained by the fact that almost all of its French speaking population was Catholic, and . . . the Church's refusal to change its doctrine on marriage and sexuality . . . provided Quebec Catholics with the motive to abandon the traditional Christian norms in these matters; the local Catholic authorities' withdrawal from the institutions that framed people's lives "from cradle to grave" [during the late 60s] made it possible to actually abandon these norms. . . . In other words, the Catholic Church in Quebec gave up its power over these institutions, its most obvious and effective means of controlling its members, at the same time as the Holy See was tightening its control over the definition of right and wrong, and using it to ensure that the doctrine would not change. With Quebec's Catholic Church . . . no longer able to enforce this dogma this created a situation inviting Quebecers to act as though it was no longer relevant. Given the circumstances, Quebecers chose to accept the invitation, and treated it as irrelevant.¹¹⁴

Religion does seem to be a powerful factor in explaining Quebec's unusually high cohabitation rate; Francophone, predominantly Catholic Canadians have a higher cohabitation rate than Anglophone, predomi-

111. See Cormier & Klerman, *supra* note 110 (finding that economic fluctuations, as indexed by annual changes in the unemployment rate, were associated with changes in the suicide rate for males and females from 1966 to 1981 and concluding that "[e]conomic fluctuations are one of the important social factors that may have contributed to the increase in suicide rates in Quebec from 1966 to 1981"). See also Catherine Krull & Frank Trovato, *The Quiet Revolution and the Sex Differential in Quebec's Suicide Rates: 1931-1986*, 72 SOC. FORCES 1121 (1994). During the mid-1990s, Quebec continued to have the highest suicide rate among the Canadian provinces. See Table 1.4.19.3 Suicide (ICD-9 E950-E959), age-standardized rate per 100,000 population and confidence interval, by sex, Canada, provinces, territories, and health regions, 1996, <http://www50.statcan.ca/english/freepub/82-221-XIE/00601/tables/pdf/P14193.pdf>. Curiously, in a survey in the mid-90s, Quebecers rated their self-esteem higher than did Canadians from other provinces. <http://www50.statcan.ca/english/freepub/82-221-XIE/00601/stat1.htm#wb2>.

112. See Federal Reserve Bank of Boston New England Policy Ctr., *Economic Similarities Between Maine and Neighboring Canadian Provinces* (2007), <http://www.bos.frb.org/economic/neppc/memos/2007/nagowski030107.pdf>.

113. See Statistics Canada, *supra* note 105.

114. Laplante, *supra* note 106, at 1, 14.

nantly Protestant Canadians no matter where they live in Canada.¹¹⁵ However, Anglophone Canadians who live in Quebec also have a higher cohabitation rate than Anglophones who live in the other provinces.¹¹⁶ This might be the result of economic factors, or it might be the result of majority Francophone sentiment influencing minority Anglophone attitudes.

The possibility that Anglophone Quebecers have been influenced by the anti-Catholic views of their Francophone neighbors is a particularly intriguing one. While highly relevant to Catholic Francophones, the actions of the Catholic Church are not, of course, personally relevant to non-Catholic Anglophones. But “bandwagon” effects often play an important role in determining public opinion, and public opinion, over time, plays an important role in determining private attitudes and behavior.¹¹⁷

A set of British experiments demonstrates just how large this bandwagon effect can be. The researchers gave two sets of research subjects, all unaware of the research experiment, information about public attitudes toward abortion. One group was told that public attitudes were becoming more permissive, the other that public attitudes were becoming more disapproving. When their own views were solicited, twelve percent more of the first group expressed opposition to tightening restrictions on abortion.¹¹⁸ In other words, a *perception* about public opinion appears to have swayed the opinions of more than ten percent of the research subjects. And “[e]ach new person on [an] . . . upward bandwagon induces additional people to climb on.”¹¹⁹

Of course, the mere fact that individuals expect their own position to be a minority view does not necessarily make them abandon it. Individuals with strongly held opinions will typically hold to their preferences, particularly if those opinions are key to their identities as members of a particular group.¹²⁰ But most of us can be swayed by our expectations about the views of others, with the result that a major shift in public attitudes can complete its course with remarkable speed. Professor Kuran offers the attitudinal shift that followed the Indira Gandhi’s declaration of

115. See Lachappelle, *supra* note 106.

116. See *id.*

117. The “bandwagon” phenomenon is the subject of a large literature. See generally THOMAS C. SCHELLING, *MICROMOTIVES AND MACROBEHAVIOR* (1978); STEPHEN R.G. JONES, *THE ECONOMICS OF CONFORMISM* (1984); JAMES S. COLEMAN, *FOUNDATIONS OF SOCIAL THEORY* (1990). See also TIMUR KURAN, *PRIVATE TRUTHS, PUBLIC LIES: THE SOCIAL CONSEQUENCES OF PREFERENCE FALSIFICATION* 69–82 (1995).

118. See Catherine Marsh, *Back on the Bandwagon: The Effect of Opinion Polls on Public Opinion*, 15 *BRIT. J. POL. SCI.* 51 (1984).

119. KURAN, *supra* note 117.

120. The Amish represent an excellent example of this phenomenon.

a state of emergency as an example of this phenomenon

In 1975, right before [Gandhi declared a state of emergency,] . . . the streets were teeming with anti-government agitators confidently vowing never to give up. In this atmosphere, the opposition leader J.P. Narayan asked an animated audience of students whether they would go to class or to prison. "Prison!" they shouted in unison. Then came the Emergency and the round-up of opposition leaders. With hopes of revolution fading, millions quietly returned to their classes within a matter of weeks. Evidently, the Emergency altered the dynamics of public opinion by making it seem that Gandhi's government would manage, after all, to hold onto power and regain public support.¹²¹

Closer to the topic at hand, public opinion about marriage and divorce changed quite dramatically during the 1960s and 1970s. In the early 1960s, eighty percent of the public agreed that "a couple should stay together" for the sake of the children. By the 1980s agreement with this statement had dropped to fifty percent.¹²²

Of course, public attitudes toward cohabitation have also been shifting. Describing their interviews with British cohabitants, Barlow and James report that

[d]ecisions [about marriage] are now seen as purely personal life-style choices. . . . [T]he social and cultural norms which made people feel that they . . . ought to get married in order to be accepted as a decent member of society seem to have disappeared.¹²³

And—just as in the case of abortion—if individuals *believe* that public opinion about formal marriage is increasingly dismissive, individuals without strongly held views on the subject may well become more dismissive themselves. The interviews described by Professor Eekelaar in his contribution to this symposium seem to evidence this tendency to parrot the perceived norm; some of the interviewees seem almost embarrassed about their decision to marry, and a number seem eager to pin their decision to marry on another person, such as a traditional parent.¹²⁴

It thus seems likely that public opinion trends and their tendency to produce bandwagon effects has played a major role in promoting the decline of marriage in Quebec. It also seems likely that these factors are important determinants of cross-national and ethnic variation in marriage

121. KURAN, *supra* note 117, at 72.

122. See Larry Bumpass, *The Changing Context of Parenting in the United States*, <http://parenthood.library.wisc.edu/Bumpass/Bumpass.html>. Since then, public opinion has remained remarkably stable. See Axinn & Thornton, *supra* note 59, at tbl.8.2 (showing that 19.6% (1970s), 17.9% (1980s), and 17.3% (1990s) of respondents agreed or were neutral toward the statement "parents should stay together even if they do not get along.")

123. Barlow & James, *supra* note 1, at 160.

124. See Eekelaar, *infra* at 413 (indicating that "the largest single category" of reasons offered for marrying represented complying with social convention).

and cohabitation norms.

In sum, the decline of marriage is almost certainly the result of several interlinked factors. We can confidently say that the likelihood of marriage is affected by economic factors, including male-to-female sex ratios, employment and earnings patterns. We can also confidently say that marriage decision-making is affected by cultural expectations and the sexual, reproductive, and family-formation norms that these expectations induce. Although we lack the capacity to assess the relative importance of economic and cultural factors on the individual, group, or societal level, we do know that the trends set in motion by either economic or cultural conditions can produce bandwagon effects that magnify their impact and may ultimately—sometimes quite suddenly—produce much larger changes in attitudes and behavior than the underlying sources of the trend would suggest.

V. What Should Policymakers Do?

Because the decline of marriage results from a number of different factors, policymakers face large difficulties in reversing the trend. These policy-making difficulties are magnified because the personal benefits of marriage are concentrated in long-term, harmonious marital relationships. Initiatives that encourage couples with weak, highly conflicted relationships to enter into formal marriage along with those who have strong, unconflicted relationships may foster the signaling function of marriage but cannot produce significant gains in adult or child well-being. Ideally, then, public policy would encourage couples to defer marriage—formal or informal—and childbearing until they have determined that their relationship has good prospects for long-term success. It would also encourage them to enter into formal, ceremonial marriage when and if they make a positive determination about their long-term prospects. Achieving a result this nuanced is obviously very difficult given the range of variables that appear to affect marital decision-making and our limited understanding of how those variables work together.

Nuance aside, even a simpler agenda such as increasing the overall marriage rate would be a large and very difficult undertaking. As an example of the problems that policymakers will confront, consider the problem of “lowest-low” fertility, which now afflicts at least seventeen European nations that collectively contain half of the continent’s population.¹²⁵ Lowest-low fertility refers to a fertility rate of 1.3 lifetime births per woman or fewer, a rate that necessarily produces a halving of the popula-

125. See Hans-Peter Kohler et al., *Low Fertility in Europe: Causes, Consequences, and Policy Implications*, in *THE BABY BUST: WHO WILL DO THE WORK? WHO WILL PAY THE TAXES?* (F.R. Harris ed., 2006).

tion within forty-five years and all of the social and economic dislocations that such a dramatic decline would produce. Demographers agree that lowest-low fertility, like the decline of marriage, is the product of economic and cultural factors in combination; they also agree that the impact of these factors is enhanced by “social feedback” effects that “can produce rapid, persistent and generally irreversible delays in childbearing across a wide range of socioeconomic conditions.”¹²⁶ Reversing lowest-low fertility does not demand nuanced results; it simply demands an increase in the birth rate.

Lowest-low fertility is also a dramatic social problem—no one wants to see a nation’s population decline by fifty percent—capable of producing a strong and bipartisan public-policy response. Indeed, the affected nations have already begun to respond and have adopted a wide range of incentives—tax advantages, cash benefits, child-care subsidies and opportunities, parental leave, new employment policies—aimed at encouraging women to have more babies. Studies of these policies have reached mixed conclusions as to their impact. However, a fairly recent review of the research reports that the evidence supports only a “weak” relationship between these various incentives and reproductive behavior; it concludes that policymakers “should not expect too much from pronatalist policies,” particularly given that current knowledge is inadequate to guide the design of optimal interventions.¹²⁷ If policymakers can expect only limited results from large-scale incentives aimed at the straightforward goal of producing more births, one must assume that they can expect even more limited results from incentives aimed at increasing marriage and marital birth rates.

That public policy initiatives can produce only limited results does not mean that they are unimportant. Public policy may make a difference at the margins. And, as Professor Kuran’s description of the public-opinion shift occasioned by Gandhi’s declaration of emergency makes clear, a change in public policy can have a substantial impact on public opinion and thus holds the potential to itself create a bandwagon shift in public attitudes. Policymakers need to be careful that they do not inadvertently trigger a bandwagon effect that promotes the decline of marriage by adopting misguided initiatives that negatively affect public opinion about marriage.

126. *See id.*

127. JOELLE E. SLEEBOS, *LOW FERTILITY RATES IN OECD COUNTRIES: FACTS AND POLICY RESPONSES* 49 (OECD Social, Employment, & Migration Working Paper No. 15, 2003, <http://www.oecd.org/dataoecd/13/38/16587241.pdf>). *See also* Hans-Peter Kohler et al., *Low and Lowest-Low Fertility in Europe: Causes, Implications and Policy Options* (Pop. Assoc. of America Ann. Mtg, 2006), <http://paa2006.princeton.edu/abstractViewer.aspx?submissionId=60220>.

Given these concerns, shifts in the law that assimilate some cohabitational relationships to marriage would appear to be particularly undesirable. These shifts seem to be motivated, in large part, by the sense that women in long-term cohabitational relationships are disadvantaged at relationship dissolution as compared to their married peers and aim at reducing that disadvantage.¹²⁸ Some such schemes rely on individualized fact-finding; others, more numerous, rely on the duration of cohabitation or the birth of a common child. The individualized schemes recreate and exaggerate the fact-finding problems inherent in the common-law marriage doctrine; the durational and common-child approaches resolve some of the fact-finding difficulties of the individualized schemes but reduce individual autonomy and risk the imposition of obligations on individuals who lack marital understandings or—worse—who have affirmatively chosen to avoid marital obligations by remaining single.¹²⁹ Although these reasons alone should deter policymakers from initiating such “conscriptive” regulatory schemes, policymakers inclined toward this type of initiative should additionally consider the fact that conscriptive schemes not so subtly signal that the decision to marry is unimportant. Such a signal has the potential to contribute to the perception that public support for formal marriage is declining and thus to trigger exactly that.

Schemes to promote marriage through direct financial incentives are less likely to trigger undesirable bandwagon effects, but they also appear to be misguided. Marriage is a valuable social institution both because of its signaling function and the health, wealth, and happiness that it offers to adult partners and their children. But financial incentives distort marital decision-making and may produce, at high enough levels, sham marriages that reduce marriage’s capacity to signal intention or to provide personal benefits. Financial incentives aimed at the very poor are thus particularly ill-advised as individuals who need money badly are more likely to be swayed by monetary inducements.¹³⁰

Policies that establish marriage penalties are also undesirable as these, too, create distorting incentives and may deter couples with marital intentions from formalizing their relationship in order to evade these penalties. Over time, marriage evasion, like conscriptive rules, can reduce marriage’s capacity to accurately signal intention and contribute to the perception that formal marriage is not a meaningful step.¹³¹

128. See Garrison, *Is Consent Necessary?*, *supra* note 7 at p. 873–74.

129. See *id.* at 848–64 (reviewing evidence).

130. For a more detailed account of problems associated with marriage incentives, see Garrison, *supra* note 6.

131. For a more detailed account of problems associated with marriage penalties, see Garrison, *supra* note 6.

On the other hand, policies that neutrally, but sharply, distinguish marriage from cohabitation appear to be warranted and appropriate. These policies reinforce the perception that marriage is not just a piece of paper and thus encourage both thoughtful marital decisions and decisions that segregate those with marital intentions from those without such intentions. These policies may also reinforce public opinion in favor of formal marriage for those with marital intentions and childbearing within such relationships.

In the United States, policies aimed at reducing the social disadvantages that are strongly associated with nonmarriage and nonmarital birth also appear to be valuable. Indeed, the strong and consistent association between disadvantage and the failure to marry is large enough that it is not obvious that the state can effectively promote marriage without such policies. As Professor Wax explains in her contribution to this symposium, the increasing class divergence in family formation norms contributes to increased income inequality and enhances the disadvantages associated with growing up in a low-income family.¹³² Moreover, the research data shows that the same disadvantages that appear to promote nonmarriage and nonmarital childbearing also promote divorce¹³³ and an enormous array of problems in family functioning. For example, child maltreatment is highly concentrated among disadvantaged families: a U.S. national incidence study found that children from families with annual incomes below \$15,000 were sixty times more likely to die from maltreatment and twenty-two times more likely to be seriously harmed by it than were children from families with annual incomes above \$30,000.¹³⁴ Single and adolescent parenting, substance abuse, mental health problems, adult family violence, and lack of social supports are all highly correlated with child maltreatment;¹³⁵ these various maltreatment-risk factors are also

132. See Wax, *infra*. p. 567.

133. See U.S. BUREAU OF THE CENSUS, STUDIES IN HOUSEHOLD AND FAMILY FORMATION: WHEN HOUSEHOLDS CONTINUE, DISCONTINUE, AND FORM 18–21 (CURRENT POPUL. REP. Series P-23 No. 180, 1992) (reporting that divorce is twice as common among those living below the poverty line as compared with the general population rate). See also WILLIAM J. GOODE, WORLD CHANGES IN DIVORCE PATTERNS 154–55 (1993) (summarizing research on relationship between socioeconomic class and divorce rates); Zimmermann & Easterlin, *supra* note 17 (finding that those whose marriages break up have lower average socioeconomic status).

134. See A.J. SEDLAK & D.D. BROADHURST, THIRD NATIONAL INCIDENCE STUDY OF CHILD ABUSE AND NEGLECT (U.S. Dep't Health & Hum. Servs., 1996). Extreme poverty also tends to be associated with more extreme abuse and neglect. See COMMISSION ON BEHAVIORAL AND SOCIAL SCIENCES & EDUCATION, LOSING GENERATIONS: ADOLESCENTS IN HIGH-RISK SETTINGS 19 (1993) (summarizing studies).

135. See Marsha Garrison, *Reforming Child Protection: A Public Health Perspective*, 12 VA. J. SOC. POL'Y & L. 590, 613–15 (2005) (summarizing research).

highly correlated with each other and with low socioeconomic status.¹³⁶ Initiatives designed to reduce the disadvantages that promote nonmarriage and nonmarital childbearing thus hold the potential to improve relational quality and family functioning as well as to promote formal marriage. For example, high-quality, intensive preschool education is significantly associated not only with long-term educational and social advantages, but also with a lower rate of child maltreatment and teen pregnancy.¹³⁷ Policymakers should certainly look for initiatives that hold the potential to produce similar synergistic effects.

In sum, although policymakers can expect only limited results from initiatives designed to promote formal marriage, well-designed policies that promote the socioeconomic conditions in which successful marriage flourishes, reduce economic disincentives to marry, and offer clear dividing lines between formal marriage and cohabitation are all supported by the evidence. These policies do not have the capacity to bring back the world in which marriage and marital childbearing were almost universal, but they may have the capacity to make a difference at the margins. They do not appear to hold any potential for causing harm. And they may also promote other improvements in family relationships and functioning.

136. *See id.* at 615 (summarizing research); CHILDREN IN POVERTY: CHILD DEVELOPMENT AND PUBLIC POLICY 23–156 (Aletha C. Huston ed. 1993) (summarizing research on links between poverty, parental dysfunction, and poor child outcomes).

137. *See, e.g.*, U.S. DEP'T OF HEALTH & HUMAN SERVICES ADVISORY COMMITTEE ON HEAD START RESEARCH, EVALUATING HEAD START: A RECOMMENDED FRAMEWORK FOR STUDYING THE IMPACT OF THE HEAD START PROGRAM, <http://www2.acf.dhhs.gov/programs/hsb/research/hsreac/1999report/chapter3.htm>; A.J. Reynolds & D.L. Robertson, *School-Based Early Intervention and Later Child Maltreatment in the Chicago Longitudinal Study*, 74 *CHILD DEV.* 3 (2003); A.J. Reynolds et al., *School-Based Early Intervention and Child Well-Being in the Chicago Longitudinal Study*, 82 *CHILD WELFARE* 633 (2003).