

# IS MARRIAGE FOR RICH MEN?<sup>1</sup>

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At the center of critical theory, including feminism and much of masculinities theory, is a distrust of hierarchy. Yet, promotion of gender equality *between* men and women does not necessarily address the role of hierarchies *among* men or *among* women,<sup>2</sup> and the role of male hierarchies often has different consequences from those among women.<sup>3</sup> In this article, we use masculinities theory, which focuses on the construction of manhood and masculinity, to critique the relationship between marriage, male inequality, and gender hierarchy.

Marriage has become a symbol in the culture wars whether the focus is on the decreasing rates of marriage and high levels of divorce or on the increasing access of gays and lesbians to the institution. Conservatives tend to see the decline of marriage as a sign of individual moral failings.<sup>4</sup> Critical theorists celebrate the creation of greater choice in the construction of families, and freedom from the patriarchal constraints of gendered marriage norms.<sup>5</sup> Today's decline in marriage rates, however, is a class-based affair that concentrates the advantages of two-parent involvement on the children of the elite, further entrenching class advantage. While fatherhood has been closely associated with marriage, today paternity is almost as likely to be established outside of mar-

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<sup>1</sup> With apologies to Rick Banks, whose book, *Is Marriage for White People?*, inspired this title. See RALPH RICHARD BANKS, *IS MARRIAGE FOR WHITE PEOPLE? HOW THE AFRICAN AMERICAN MARRIAGE DECLINE AFFECTS EVERYONE* (2011).

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<sup>2</sup> See, e.g., Nancy E. Dowd, Nancy Levit & Ann C. McGinley, *Feminist Legal Theory Meets Masculinities Theory*, in *MASCULINITIES AND THE LAW: A MULTIDIMENSIONAL APPROACH* 25, 29 (Frank Rudy Cooper & Ann C. McGinley eds., 2012) ("Consistent with the hierarchical relationships among men and the general dominance of men over women, there is a dominant masculinity that reinforces who is at the top of the masculine heap.").

<sup>3</sup> For a thoughtful essay on the consequences of thinking of men and women apart from each other, see Nancy Levit, *Separate Silos: Marginalizing Men in Feminist Theory and Forgetting Females in Masculinities Studies* (Feb. 8, 2010) (unpublished manuscript), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1550365](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1550365).

<sup>4</sup> See, e.g., CHARLES MURRAY, *COMING APART: THE STATE OF WHITE AMERICA 1960–2010*, at 149–50 (2012); Amy L. Wax, *Diverging Family Structure and "Rational" Behavior: The Decline in Marriage as a Disorder of Choice*, in *RESEARCH HANDBOOK ON THE ECONOMICS OF FAMILY LAW* 15, 15 (Lloyd R. Cohen & Joshua D. Wright eds., 2011).

<sup>5</sup> See, e.g., NANCY D. POLIKOFF, *BEYOND (STRAIGHT AND GAY) MARRIAGE: VALUING ALL FAMILIES UNDER THE LAW* 6 (2008).

riage as within, and the marital presumption itself has become increasingly identified with class.<sup>6</sup>

Critical theory has yet to deal with the decline of marriage as a consequence and cause of greater hierarchy. An egalitarian society might move away from marriage toward a greater variety of families with support for all. A society characterized by greater inequality reinforces social disadvantage through family form.

At the core of these developments may be a central irony: feminist success, in an unequal society, may reinforce the dominance of those “at the top of the masculine heap.”<sup>7</sup> In today’s society, this may be occurring because well-off men appear to be better able either to perform the traditional breadwinner role *or* to display more flexible attitudes toward gender roles and the division of household tasks than the less successful. The most successful men want successful wives. Wooing and keeping successful wives requires security in one’s own success and identity and requires enough flexibility to manage dual careers or complex roles.<sup>8</sup> Less successful men, in contrast, are more likely to be influenced by environments that define gender roles in traditional terms and view male success in terms of the ability to succeed as a provider.<sup>9</sup> Yet, the changing economy has decimated the high paying jobs for blue-collar men that once served as markers of male success without creating more flexible attitudes toward gender.<sup>10</sup> *Employed* blue-collar men help out more around the house than the unemployed, and working class women who need to work because of their partners’ unreliable income have become increasingly likely to leave men who fail to contribute.<sup>11</sup> The irony, therefore, is that the combination of women’s greater independence with middle-class men’s more egalitarian gender attitudes strengthens what has long been seen as a patriarchal institution—

<sup>6</sup> The nonmarital birth rate is well over forty percent and, even when children are born into a marriage, the marital presumption is no longer absolute. See June Carbone & Naomi Cahn, *Marriage, Parentage, and Child Support*, 45 FAM. L.Q. 219, 219 (2011); Leslie Joan Harris, *Questioning Child Support Enforcement Policy for Poor Families*, 45 FAM. L.Q. 157, 160 (2011); June Carbone, *Out of the Channel and into the Swamp: How Family Law Fails in a New Era of Class Division*, 39 HOFSTRA L. REV. 859, 867–70 (2011).

<sup>7</sup> Dowd et al., *supra* note 2, at 29.

<sup>8</sup> Indeed, a significant force aggravating societal inequality is assortative mating, which increases both overall family income and cognitive resources available for children. See Stéphane Mechoulan, *Divorce Laws and the Structure of the American Family*, 35 J. LEGAL STUD. 143, 161–62 (2006) (attributing lower divorce rates to greater assortative mating); Leslie McCall and Christine Percheski, *Income Inequality: New Trends and Research Directions*, 36 ANN. REV. SOC. 329, 336 (2010).

<sup>9</sup> And a principal consequence of inability to perform expected masculine roles may be greater family instability. See, e.g., PAUL R. AMATO ET AL., *ALONE TOGETHER: HOW MARRIAGE IN AMERICA IS CHANGING* 122–23 (2007) (observing that working class couples become more divorce prone if the woman is working full time because her husband does not earn enough to support her); BANKS, *supra* note 1, at 99 (“Cecelia says it didn’t bother her that her husband earned a lot less than she did. But the more I talked with her, the more it seemed that in some basic way she did think less of him for it. It was as though he hadn’t earned the right to make financial decisions.”).

<sup>10</sup> See, e.g., LIZA MUNDY, *THE RICHER SEX: HOW THE NEW MAJORITY OF FEMALE BREADWINNERS IS TRANSFORMING SEX, LOVE, AND FAMILY* 6 (2012).

<sup>11</sup> See AMATO ET AL., *supra* note 9, at 138; discussion *infra* Part I.

marriage—and, in doing so, increases greater class-based hierarchies that make society as a whole more unequal.<sup>12</sup>

Critical theory interrogates the very notion of hierarchy; it has also long recognized that hierarchies are interrelated.<sup>13</sup> Masculinity theory has certainly taken on the construction of gender within marriage, centering in large part on the assumptions about, and reinforcement of, the male role as breadwinner. Yet, it also recognizes that some men might be victimized even as others are empowered by the expectations associated with such roles.<sup>14</sup> While masculinities theory has focused on the social and political constructs that have “men as a group power over women as a group . . . [and] the engagement in or the ‘doing’ of these masculine practices by men or women,”<sup>15</sup> masculinities theory also examines how this structure disadvantages men who are unable to exercise these privileges. The complement to this literature is greater development of the ideal of equality and how it might aid the simultaneous dismantling of the hierarchies associated with gender, families, and class.

The first two sections of this Article document the differences between various groups of men with respect to education, employment, and marriages. They show that aggregate figures mask striking class-based divergences. The gendered wage gap, for example, has widened at the top and narrowed at the bottom. The likelihood that a fourteen-year-old is being raised in a two-parent family has increased for both African American and white college graduates, while declining markedly for the rest of the population. These sections connect growing economic inequality, which has affected men differently from women, to increased family-based instability and financial stress.

The final section explores reasons for these divergences and briefly sketches a partial picture of the solutions.<sup>16</sup> The ideal solution, of course, is less inequality in society generally; a more egalitarian society is more likely to promote more stable family relationships or to assuage the disadvantages associ-

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<sup>12</sup> Jason DeParle & Sabrina Tavernise, *For Women Under 30, Most Births Occur Outside Marriage*, N.Y. TIMES (Feb. 17, 2012), [http://www.nytimes.com/2012/02/18/us/for-women-under-30-most-births-occur-outside-marriage.html?\\_r=2&pagewanted=all](http://www.nytimes.com/2012/02/18/us/for-women-under-30-most-births-occur-outside-marriage.html?_r=2&pagewanted=all) (“[E]ducated men have also been quicker than their blue-collar peers to give women equal authority. ‘They are more willing to play the partner role,’ said Sara McLanahan, a Princeton sociologist.”).

<sup>13</sup> Indeed, the very idea of intersectionality rests on that notion. See, e.g., Kathy Davis, *Intersectionality as Buzzword: A Sociology of Science Perspective on What Makes A Feminist Theory Successful*, 9 FEMINIST THEORY 67, 67–68 (2008); see also Mary Anne C. Case, *Disaggregating Gender from Sex and Sexual Orientation: The Effeminate Man in the Law and Feminist Jurisprudence*, 105 YALE L.J. 1, 3 (1995); Frank Rudy Cooper, *Against Bipolar Black Masculinity: Intersectionality, Assimilation, Identity Performance, and Hierarchy*, 39 U.C. DAVIS L. REV. 853, 853 (2006); Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241, 1242–43 (1991); Trina Grillo, *Anti-Essentialism and Intersectionality: Tools to Dismantle the Master’s House*, 10 BERKELEY WOMEN’S L.J. 16, 17 (1995).

<sup>14</sup> Dowd et al., *supra* note 2, at 29–30.

<sup>15</sup> *Id.* at 25.

<sup>16</sup> For additional solutions, see JUNE CARBONE & NAOMI CAHN, *WHAT REALLY HAPPENED TO THE AMERICAN FAMILY* (forthcoming 2013); June Carbone & Naomi Cahn, *The End of Men or the Rebirth of Class? How Hanna Rosin Leaves Out the 1% & Family Law Fails the Other 99%* (George Washington Univ. Legal Studies Research Paper No. 2012-148, 2012), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2192587](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2192587).

ated with family form.<sup>17</sup> Short of that, the solution requires addressing community health, and a critical part of that involves male well-being. We are in the midst of a long-term restructuring of the relationship between work and family. The “homemaker” role, to which women have long been relegated, is no longer sufficient to occupy the entire adult lifetime of either a man or a woman. At the same time, “good jobs” with the flexibility to accommodate family needs and the stability to provide a secure foundation for family life are increasingly hard to come by. And, particularly in the United States, the transitions between school and employment, home and work, one job and another have become harder to manage, increasing relationship fragility. The successful middle class, with better employment opportunities and more flexible workplaces, appears to have remade the gender expectations underlying family life. The working class has neither embraced the new middle class formula nor tailored more traditional expectations to the new economic realities. To address increasing male inequality therefore requires examination of the interaction between male socialization, employment and family. The result needs to revitalize men’s ability to participate in the workplace *and* their children’s lives without recreating a “breadwinner” role that subordinates women and deems many men failures. We should not dismantle one hierarchy based on the subordination of women only to replace it with a new one based on the intersection of gender and class.

#### I. VARIATION BETWEEN MEN

A half-century ago, high rates of marriage were close to universal.<sup>18</sup> The one notable exception—and the subject of alarm in a much-vilified 1965 report by Daniel Patrick Moynihan —involved lower-class African Americans, whose divorce rates were high and non-marital birth rates were rising.<sup>19</sup> Today, marriage has emerged as a marker of class for the country as a whole. For the first time ever, fewer than half of all households consist of married couples.<sup>20</sup> Moreover, just like access to health care, stable employment, and higher education, access to marriage has become a class-based affair. According to the National Marriage Project, the likelihood of marrying, staying married, and raising chil-

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<sup>17</sup> For other discussions of the association of family and privilege, see MAXINE EICHNER, *THE SUPPORTIVE STATE: FAMILIES, GOVERNMENT, AND AMERICA’S POLITICAL IDEALS* (2010); MARTHA ALBERTSON FINEMAN, *THE NEUTERED MOTHER, THE SEXUAL FAMILY AND OTHER TWENTIETH CENTURY TRAGEDIES* (1995); LINDA C. McCLAIN, *THE PLACE OF FAMILIES: FOSTERING CAPACITY, EQUALITY, AND RESPONSIBILITY* 5, 7 (2006).

<sup>18</sup> See, e.g., JOANNA L. GROSSMAN & LAWRENCE M. FRIEDMAN, *INSIDE THE CASTLE: LAW AND THE FAMILY IN 20TH CENTURY AMERICA* 54–55 (2011) (noting that marriage was nearly universal in 1900 and that the percentage of women who had never been married by age twenty-nine was 8.3% in 1960 for whites and 13% for blacks and in 2009, the percentage of women between fifty and fifty-four who had ever been married was still 95% for whites, but only 75% for blacks, down from 93% in 1980).

<sup>19</sup> DANIEL P. MOYNIHAN, UNITED STATES DEPT. OF LABOR, *THE NEGRO FAMILY: A CASE FOR NATIONAL ACTION* (1965), available at <http://www.blackpast.org/?q=primary/moynihan-report-1965>.

<sup>20</sup> Sabrina Tavernise, *Married Couples Are No Longer a Majority, Census Finds*, N.Y. TIMES, May 26, 2011, at A22.

dren within a two-parent family correlates strongly with education.<sup>21</sup> Compared to twenty years ago, the likelihood that a fourteen-year-old girl will be in a family with both parents has risen for the children of college graduates and fallen substantially for everyone else.<sup>22</sup> In the midst of cries of alarms about family decay, marital stability has increased for college graduates with declining divorce rates and non-marital birth rates that have stayed below ten percent.<sup>23</sup>

The results have surprised almost everyone, and critical theorists should be among the first to say that it wasn't supposed to be this way. We recognized that the relatively stable families of bygone eras came at a high price—the wholesale subordination of women. A woman could not hope to manage children without a husband and, as Susan Moller Okin observed, once a woman had a husband and small children, her power within the family reached its nadir.<sup>24</sup> Moreover, the benefits of the family system, which directed women's energies toward their children's education and moral supervision, remained beyond the reach of working-class women who could not survive on their husband's earnings alone.<sup>25</sup> Only in the relatively brief period at the end of World War II did middle-class-family norms become close to universal. Even then, they corresponded to early—not entirely voluntary—marriage, and a decline in women's educational parity with men.<sup>26</sup> Almost as soon as these norms fully took hold, moreover, they began to decay, as the *Moynihan Report* so dramatically announced for poor African Americans in the sixties, setting the stage for a new era of class division.<sup>27</sup>

<sup>21</sup> See NAT'L MARRIAGE PROJECT, WHEN MARRIAGE DISAPPEARS: THE NEW MIDDLE AMERICA 56 (W. Bradford Wilcox ed., 2010), available at [http://www.dss.virginia.gov/files/about/sfi/intro\\_page/resources/marriage\\_dissappears.pdf](http://www.dss.virginia.gov/files/about/sfi/intro_page/resources/marriage_dissappears.pdf).

<sup>22</sup> See *id.* at xi.

<sup>23</sup> See *id.* at 56. As in 1965, however, the notable exception to the rosy picture for family stability, at least for the elite, comes from African Americans. While the white non-marital birth rate for college graduates has stayed at two percent; for African American college graduates, the numbers are rising and now approach the twenty-five percent level that caused such alarm at the time of the *Moynihan Report*. *Id.* Still, the percentage of fourteen-year-old girls living with both parents has increased for African American college graduates as well as whites between 1982 and 2006. *Id.* at 57. See also discussion *infra* notes 75–77 and accompanying text.

<sup>24</sup> See SUSAN MOLLER OKIN, JUSTICE, GENDER, AND THE FAMILY 4 (1989).

<sup>25</sup> See JUNE CARBONE, FROM PARTNERS TO PARENTS: THE SECOND REVOLUTION IN FAMILY LAW xiv–xv, 235 (2000).

<sup>26</sup> Marriage rates for African American women exceeded white rates in the 1940s. GROSSMAN & FRIEDMAN, *supra* note 18, at 54. For women's falling education parity with men in the post-war era, see Jerry A. Jacobs, *Gender Inequality and Higher Education*, 22 ANN. REV. SOC. 153, 164 (1996).

<sup>27</sup> MOYNIHAN, *supra* note 19. For a retrospective on the *Moynihan Report*, see Douglas S. Massey & Robert J. Sampson, *Moynihan Redux: Legacies and Lessons*, 621 ANNALS AM. ACAD. POL. & SOC. SCI. 6, 6, 13 (2009). In their introduction, Massey and Sampson observe that “Moynihan’s core argument was really rather simple: whenever males in any population subgroup lack widespread access to reliable jobs, decent earnings, and key forms of socially rewarded status, single parenthood will increase, with negative side effects on women and children.” *Id.* at 13. See also Frank F. Furstenberg, *If Moynihan Had Only Known: Race, Class, and Family Change in the Late Twentieth Century*, 621 ANNALS AM. ACAD. POL. & SOC. SCI. 94, 94–95 (2009) (restating Moynihan’s argument in terms of the intersection of race and class).

We believed that the sexual revolution of the sixties and seventies, together with the movement remaking women's lives, would dismantle the gender hierarchies that allowed men to dominate women. The pill and abortion would make women free to have sex "without consequences."<sup>28</sup> Access to the paid labor market would make women independent. And, with the ability to join the paid labor market on male terms and to reject the stigmas associated with non-marital sexuality, we would be free to enter into the relationships of our choosing—marriage or cohabitation, children within marriage or without, individually negotiated divisions of family responsibility, and children as a choice rather than as an obligation or source of identity. The older generation had counseled that the "liberated" college women of the seventies would never find husbands, and economist Claudia Goldin writes that the pill, in fact, delayed marriage, allowing women time to enter the graduate programs and professional jobs that had once been closed to them.<sup>29</sup> Starting in the nineties, moreover, these delayed marriages began to usher in a new era of family stability, with the most highly educated women becoming the most likely to form stable marriages, in part, because of shift in attitudes and workplace support for elite dual earner unions.<sup>30</sup> To our surprise, feminism and the sexual revolution did not end the hierarchies of the past; they recreated different ones.<sup>31</sup>

The re-creation comes from two opposing forces, which play out by class. The first involves the role of the family in skewing the resources available to the next generation as successful men have become more likely to marry similarly successful women. The second involves the role of greater male inequality in aggravating class-based family instability as men have been both the biggest winners and biggest losers in the post-industrial economy.

The new middle-class model responded to greater opportunities for women by encouraging investment in both boys and girls, delaying marriage to give successful men and women more time to establish their careers and find compatible mates, and increasing the parental time and attention paid to children.<sup>32</sup> This model promises a huge payoff for those who can make it work: The successful have become more likely to marry each other. Their two incomes make them significantly better off than single individuals or working-

<sup>28</sup> See CATHARINE A. MACKINNON, *FEMINISM UNMODIFIED: DISCOURSES ON LIFE AND LAW* 98 (1987).

<sup>29</sup> Claudia Goldin & Lawrence F. Katz, *The Power of the Pill: Oral Contraceptives and Women's Career and Marriage Decisions*, 110 J. POL. ECON. 730, 731, 747 (2002).

<sup>30</sup> See NAT'L MARRIAGE PROJECT, *supra* note 21, at 16 (indicating that highly-educated couples are more likely to stay married raising children); see Sara McLanahan, *Diverging Destinies: How Children Are Faring Under the Second Demographic Transition*, 41 DEMOGRAPHY 607, 607–08 (2004).

<sup>31</sup> Compare NAOMI CAHN & JUNE CARBONE, *RED FAMILIES V. BLUE FAMILIES: LEGAL POLARIZATION AND THE CREATION OF CULTURE* 1–2 (2010) (describing "blue" system as the new pathway to middle class status and "red" traditionalism as blocking the universalization of the new norms), with KAY S. HYMOWITZ, *MANNING UP: HOW THE RISE OF WOMEN HAS TURNED MEN INTO BOYS* 4 (2011) (describing the independence of women as undermining males). See also CLAUDIA GOLDIN & LAWRENCE F. KATZ, *THE RACE BETWEEN EDUCATION AND TECHNOLOGY* 7–8 (2008) (exploring the relationship between education and middle class status).

<sup>32</sup> See CAHN & CARBONE, *supra* note 31, at 1 (we have previously termed this new model "blue").

class families. They have become even more likely to produce high-quality children. Their marriages have become more likely to last with divorce rates similar to those in the mid-sixties, before the era of no-fault divorce.<sup>33</sup> But, the investment needed to realize the advantages of middle-class life have increased. The families most likely to be stable are those of college graduates that form families later in life,<sup>34</sup> and postponing marriage and childbearing until the late twenties requires discipline and support.<sup>35</sup> These unions last in part because the couples' greater income allows them to procure the assistance necessary to vindicate both workplace and domestic obligations. The most stable families may well be those in which neither spouse does the housework.<sup>36</sup>

Those factors are increasingly hard to marshal for a large part of the population. As the industrial era gave way to the information economy, the new economy remade women's roles. The new economy simultaneously increased the demand for women's labor in the workforce and created labor-saving devices (and McDonald's) that reduce the amount of time devoted to the home. The result has increased the demand for women's workforce participation and remade housekeeping so that it no longer commands full-time attention. The new economy, however, eliminated the high-paid jobs once available for less-skilled men.<sup>37</sup> As a result, the "male premium," whereby men could count on earning more than women, by virtue of gender alone, has disappeared for a large part of the population. It has been replaced by a "college premium" that rewards the better educated.<sup>38</sup> At the same time, stagnating male income has made women's workforce participation more important than ever.<sup>39</sup>

Investment in women's income potential pays off accordingly, and the new economy, while continuing to generate high paying jobs for the most successful men, has increased income inequality for the country as a whole and has increased women's overall opportunities more than men's.<sup>40</sup> In addition, as women enjoy more autonomy, they do have greater ability to determine which relationships to embrace, which to leave, and which partners, if any, to include in rearing children. Within this context, marriage becomes a choice that can be

<sup>33</sup> McLanahan, *supra* note 30, at 608.

<sup>34</sup> *Id.* See also GROSSMAN & FRIEDMAN, *supra* note 18, at 53–54 (summarizing factors predicting divorce).

<sup>35</sup> Considerable debate occurs over whether the marriages of college graduates have become more stable because the successful marry later or because those who marry later are more likely to be successful and to find similarly successful partners. For purposes of our argument in this article, the direction of the causality does not matter. In either case, it increases class advantage. See, e.g., Mechoulan, *supra* note 8, at 147.

<sup>36</sup> See AMATO ET AL., *supra* note 9, at 138.

<sup>37</sup> See, e.g., Peter Whoriskey, *U.S. Manufacturing Sees Shortage of Skilled Factory Workers*, WASH. POST (Feb. 19, 2012), [http://www.washingtonpost.com/business/economy/us-manufacturing-sees-shortage-of-skilled-factory-workers/2012/02/17/gIQAo0MLOR\\_story.html](http://www.washingtonpost.com/business/economy/us-manufacturing-sees-shortage-of-skilled-factory-workers/2012/02/17/gIQAo0MLOR_story.html); Claudia Goldin & Lawrence F. Katz, *Long-Run Changes in the U.S. Wage Structure: Narrowing, Widening, Polarizing* 3 (Nat'l Bureau Econ. Research, Working Paper No. 13,568, 2007), available at <http://www.nber.org/papers/w13568>.

<sup>38</sup> See, e.g., GOLDIN & KATZ, *supra* note 31, 51–52.

<sup>39</sup> RICHARD FRY & D'VERA COHN, PEW RESEARCH CTR., WOMEN, MEN AND THE NEW ECONOMICS OF MARRIAGE 8 (2010).

<sup>40</sup> *Id.*

redefined to express individual preferences or changing expectations about family roles.

Stanford Law Professor Richard Banks began to address these issues in the context of the enormous disparity between the marriage rates of black men and black women, noting that the issue is no longer one limited to the black underclass with African American college graduate non-marital birth rates creeping up well ahead of white rates.<sup>41</sup> Nonetheless, marriage *has* effectively disappeared from the poorest communities: the non-marital birth rate for black high school dropouts is 96%, and 77% for white high school dropouts.<sup>42</sup> The number of blacks with a college degree in intact first marriages is more than double (44%) the rate for those who have not graduated from high school (21%), and the number of white high school dropouts in an intact first marriage is just over 30%.<sup>43</sup>

Underlying the marriage statistics is a growing gender imbalance, one exacerbated by race and class. Women's educational accomplishments increasingly exceed men's at every level. Today, women earn 57% of bachelor's degrees, 60% of master's degrees, and 52% of doctorates.<sup>44</sup> Among African Americans, the disparities are even greater; nearly twice as many women, for example, earn bachelor's degrees as do the men.<sup>45</sup> In graduate school, black women outnumber men almost two to one.<sup>46</sup> The relatively small number of African American men who "make it" have a large number of women from which to choose.

The result is affecting the role of marriage in the country as a whole. Nationally, women of all races graduate from high school and college at higher rates than the men. The sole remaining bastions of male predominance are the high end of the income ladder and the more lucrative graduate and professional fields; these elites are the only group in society for whom marriage remains the dominant form of family organization. For those without college degrees of every race, male wage levels, employment opportunities, and stability have fallen, while they have risen for women.<sup>47</sup> The African American poor have never recovered from the loss of inner-city jobs a half century ago nor have they benefitted economically from the civil rights revolution that opened doors

<sup>41</sup> See BANKS, *supra* note 1, at 8–9.

<sup>42</sup> NAT'L MARRIAGE PROJECT, *supra* note 21, at 56.

<sup>43</sup> *Id.* at 55.

<sup>44</sup> Liza Mundy, *Women, Money and Power*, TIME (Mar. 26, 2012), <http://www.time.com/time/magazine/article/0,9171,2109140,00.html>; see also Int'l Herald Trib., *Women Earning More Doctoral Degrees than Men in U.S.*, N.Y. TIMES (Sept. 19, 2010), [http://www.nytimes.com/2010/09/20/education/20iht-educBriefs20.html?\\_r=0](http://www.nytimes.com/2010/09/20/education/20iht-educBriefs20.html?_r=0) (reporting that women earned 50.4% of doctoral degrees awarded and 60% of all master's degrees awarded in the 2008–09 school year); see also NAT'L SCI. BOARD, SCIENCE AND ENGINEERING INDICATORS 2012, at 2-21 (2012) (reporting that "[s]ince the late 1990s, women have earned about 57% of all bachelor's degrees and about half of all [science and engineering] bachelor's degrees."), available at [www.nsf.gov/statistics/seind12/pdfstart.htm](http://www.nsf.gov/statistics/seind12/pdfstart.htm).

<sup>45</sup> See SUSAN AUD ET AL., NAT'L CTR. FOR EDUC. STATISTICS, U.S. DEP'T OF EDUC., *The Condition of Education 2012*, at 112 (2012) (reporting that "Black females earned 68 percent of associate's degrees, 66 percent of bachelor's degrees, 71 percent of master's degrees, and 65 percent of all doctor's degrees awarded to Black students" in 2009–10).

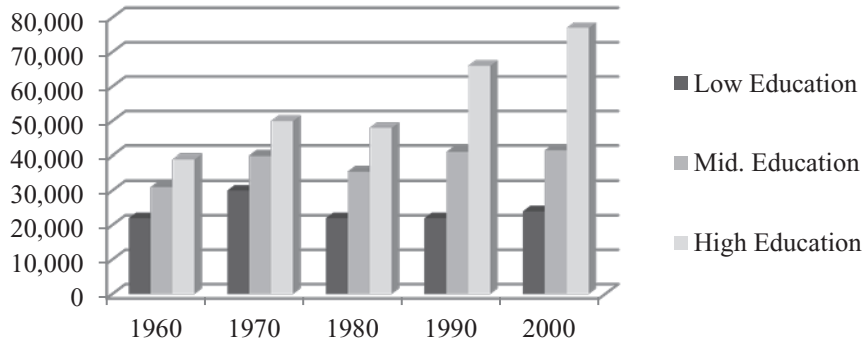
<sup>46</sup> See *id.*

<sup>47</sup> See Mundy, *supra* note 44.



for highly skilled professionals. While the mismatch between men and women produces heartache for middle-class African American women, the much greater gender imbalance in poor communities reinforces class lines and reduces the life chances of children born to everyone else. The ultimate problem is a society that treats a high percentage of all men as disposable.

TRENDS IN MEDIAN FAMILY INCOME, 1960–2000:<sup>48</sup>

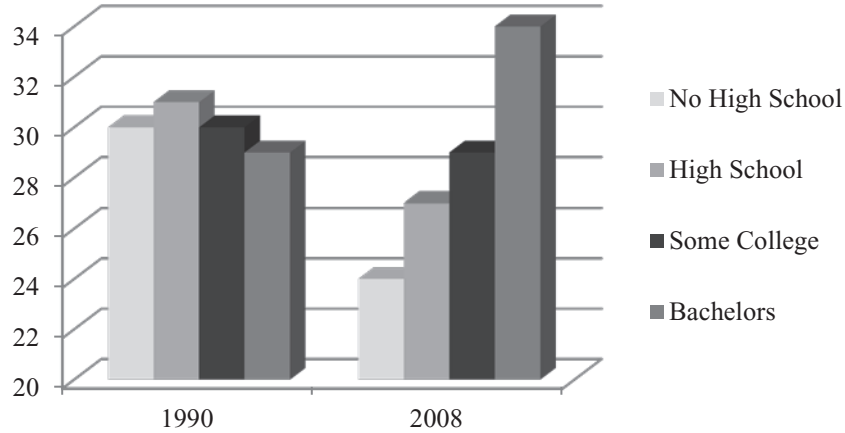


Both highly educated men and women have gained in comparison with other workers. They also have become more likely than others to marry and stay married. Moreover, the fact that most women gained compared to most men does not mean that gender equality increased for the population as a whole. The ratio between male and female wages had stayed the same for decades. In the seventies and eighties, the gap narrowed and did so overwhelmingly because of increases in income to highly skilled women.<sup>49</sup> Comparing 1990 with 2008, however, the figures have begun to diverge strikingly by education. Looking at gross figures, that is, the percentage of men's median income earned by women without controlling for any characteristic other than education, the wage gap over the last twenty years narrowed the most for the least-educated women while the gap between men and women *increased* for the most educated:

<sup>48</sup> See McLanahan, *supra* note 30, at 614.

<sup>49</sup> Francine D. Blau & Lawrence M. Kahn, *The U.S. Gender Pay Gap in the 1990s: Slowing Convergence* 17–18 (Princeton Univ. Indus. Relations Section, Working Paper No. 508, 2006), available at <http://www.irs.princeton.edu/pubs/pdfs/508.pdf> (finding that in the seventies and eighties wage gains for married women tended to be greatest for women married to middle and high wage men).

THE GENDER GAP IN MEDIAN ANNUAL INCOME OF FULL-TIME, YEAR-ROUND WORKERS, TWENTY-FIVE AND OLDER:<sup>50</sup>



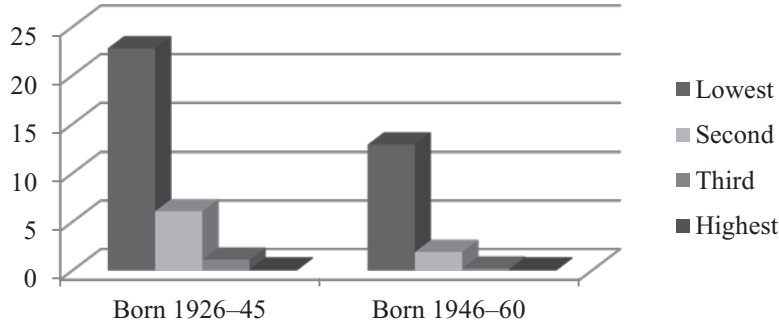
In 1990, the wage gap did not vary greatly by education, and, to the extent it did, highly educated women earned a higher percentage of male income than less-educated women. By 2008, the relationship between education and the wage gap changed direction, with the least-educated women earning a much higher percentage of male income than the most educated. More sophisticated decomposition studies confirm the trends. At the ninetieth percentile, the gap between men and women that cannot be explained by controlling for education, job experience or type of employment increases in the nineties. Indeed, looking just at white college graduates with fifteen years of experience, the gap at the ninetieth percentile becomes even more extreme, with women “losing substantial ground.”<sup>51</sup> Over the last thirty years, the men at the top have steadily gained ground at the expense of everyone else. In the bottom half of the population, however, the women have outpaced the men.

This takes us to the third factor, which exacerbates the impact on family life: employment stability. The length the average man or woman stays in a particular job has diminished substantially over the last thirty years, but the impact has been substantially greater for the working class. Consider this chart from the Social Security Administration showing the length of time an employee is likely to be out of the labor force over the course of thirty-five years:

<sup>50</sup> *Median Annual Income, by Level of Education, 1990–2009*, INFOPLEASE, <http://www.info please.com/ipa/A0883617.html> (last visited Mar. 18, 2013).

<sup>51</sup> Blau & Kahn, *supra* note 49, at 23.

AVERAGE YEARS WITH NO EARNINGS WITHIN HIGHEST THIRTY-FIVE YEARS OF EARNINGS BY EARNINGS QUARTILE:<sup>52</sup>



For the top twenty-five percent of workers (bar labeled “highest”), there is very little change between those born before and after 1945. Lack of employment increases slightly for the third quartile (bar labeled “third”). It triples, however, for the second quartile (bar labeled “second”) and doubles for the lowest quartile (bar labeled “lowest”). These workers report no earnings for twenty-three out of thirty-five of their peak earning years.

Other studies similarly show that male employment stability, measured by changes in jobs, has steadily declined for most of the period since World War II.<sup>53</sup> Women’s employment stability increased steadily for each generation of women born through 1960 (a group that would have entered the job market in the eighties), and then steadily declines.<sup>54</sup> Looking just at the men, these changes in job instability play out largely by class.<sup>55</sup>

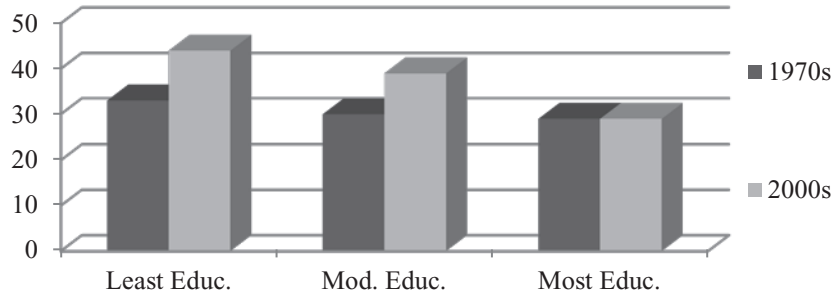
<sup>52</sup> See Chad Newcomb, *Distribution of Zero-Earning Years by Gender, Birth Cohort, and Level of Lifetime Earnings* 8 (U.S. Soc. Sec. Admin., Note No. 2000-02, 2000), available at <http://www.socialsecurity.gov/policy/docs/rsnotes/rsn2000-02.html>.

<sup>53</sup> See Henry S. Farber, *Is the Company Man an Anachronism? Trends in Long-Term Employment in the United States, 1973 to 2006*, in *THE PRICE OF INDEPENDENCE: THE ECONOMICS OF EARLY ADULTHOOD* 56, 69-70 (Sheldon Danziger & Cecilia Elena Rouse eds., 2007).

<sup>54</sup> *Id.*

<sup>55</sup> For a broader discussion of these trends, see ARNE L. KALLEBERG, *GOOD JOBS, BAD JOBS: THE RISE OF POLARIZED AND PRECARIOUS EMPLOYMENT SYSTEMS IN THE UNITED STATES, 1970s TO 2000s*, at 93 (2011) (observing that aggregate figures sometimes show relatively little change in job stability in the United States, but the average cloaks important differences as employment instability has increased for men, but not women, high school graduates and dropouts, but not the college educated, blacks more than whites, and some age groups more than others).

PERCENTAGE OF TWENTY-FIVE TO SIXTY-YEAR-OLD MEN UNEMPLOYED AT SOME POINT OVER THE PRECEDING TEN YEARS:<sup>56</sup>



In the 1970s, the differences in job instability did not vary much by education. After 2000, the job instability figures for the most educated remain about the same as the figures for the seventies. But, they increased by a third for the other two groups.

Job instability may affect relationships as much as, if not more than, low wages. The male-breadwinner role continues to define male success, and the loss of both status and income that comes with lesser employment causes many men who cannot meet the expectations associated with the breadwinner role “to be deemed as failures by society, themselves, and their partners.”<sup>57</sup> Indeed, *Newsweek* reported that the American Time Use Survey showed that “laid-off men tend to do less—not more—housework, eating up their extra hours snacking, sleeping and channel surfing (which might be why the Cartoon Network, whose audience has grown by 10 percent during the downturn, is now running more ads for refrigerator repair school).”<sup>58</sup> According to the same study, unemployed women spend twice as much time taking care of children and doing chores as men.<sup>59</sup> Unemployed men are also right behind alcoholics and drug addicts as the group most likely to beat their female partners.<sup>60</sup> And, a study in Great Britain found that increases in those seeking counseling for sexual problems increased in direct proportion to the unemployment rate.<sup>61</sup>

Almost two decades ago, sociologist Lillian Rubin found that when these factors combine, family breakup often follows. She describes one mother of small children who explained:

<sup>56</sup> NAT'L MARRIAGE PROJECT, *supra* note 21, at 43; see also W. Bradford Wilcox et al., *No Money, No Honey, No Church: The Deinstitutionalization of Religious Life Among the White Working Class*, in 23 RELIGION, WORK AND INEQUALITY 227, 245 (Lisa A. Keister et al. eds., 2012) (noting that “in the last 40 years, white working class income, employment, marital stability, and cultural conservatism have all declined—and markedly more so than they have for college-educated whites”).

<sup>57</sup> See Sara McLanahan & Christine Percheski, *Family Structure and the Reproduction of Inequalities*, 34 ANN. REV. SOC. 257, 261 (2008).

<sup>58</sup> Tony Dokoupil, *Men Will Be Men: When Guys Lose Jobs, the TV, Den and Gym Win. Women? Sex? Not So Much*, NEWSWEEK, Mar. 2, 2009, at 50.

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> LILLIAN B. RUBIN, *FAMILIES ON THE FAULT LINE: AMERICA'S WORKING CLASS SPEAKS ABOUT THE FAMILY, THE ECONOMY, RACE, AND ETHNICITY* 119 (1994).

“I don’t know, maybe we could have made it if he hadn’t lost his job” . . . “I mean, we had problems before, but we were managing. Then he got laid off, and he couldn’t find another job, and, I don’t know, it was like he went crazy. He was drinking; he hit me; he was mean to the kids. There was no talking to him, so I left, took the kids and went home to my mom’s.”

When she came back, her husband was gone and a year later, no one had seen him.<sup>62</sup>

The relationship between employment and divorce is a complex one. High overall rates of unemployment lower divorce.<sup>63</sup> Couples often feel either that they cannot afford to divorce, postponing the breakup, or that the job loss reflects bad times rather than poor character. Unemployment due to a plant closing or disability, for example, is less likely to break up a marriage than an individual layoff.<sup>64</sup> Nonetheless, changes in employment affect long-term expectations about marriage and family, and increases in male unemployment have a greater impact on family stability than increases in female unemployment.<sup>65</sup> The Great Recession, for example, which has at least temporarily reduced divorce rates, has also decreased marriage rates.<sup>66</sup> And, it may have permanent effects on the next generation’s expectations about family. Taken together with a long-term decline in the wages of unskilled men, increases in job instability, especially for those who do not graduate from college, and a corresponding increase in women’s educational achievement, wages, and employment stability, the economy has remade the terms of the marriage market. While the result has increased the family stability of the best off, it is increasingly calling into question the value of marriage for everyone else.

## II. THE TRANSFORMATION OF THE FAMILY

The final piece of the picture is the class-based increase in non-marital births. Starting with the *Moynihan Report*, this has been the part of the changing family that has attracted the most study and concern. The changes, however, are still striking. When the age of marriage began to rise for the college educated in the seventies, so too did the age of first birth. The result postponed family formation and lowered overall fertility. For high school graduates, the big drop in marriage for those in their early twenties came in the nineties—and it correlated strongly with an increase in non-marital births.<sup>67</sup>

<sup>62</sup> *Id.* at 120.

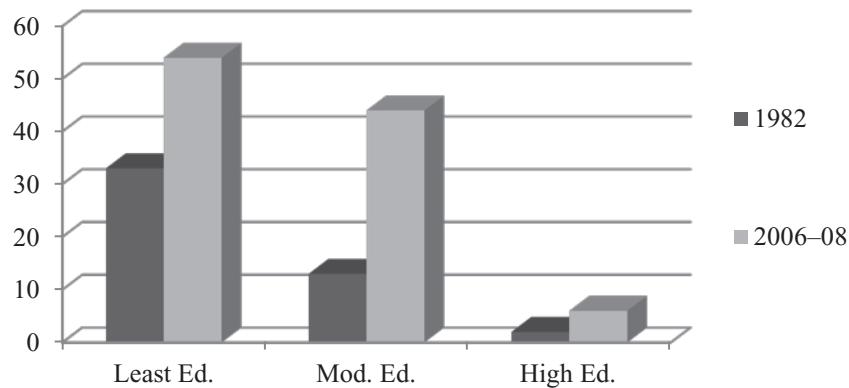
<sup>63</sup> See Judith K. Hellerstein & Melinda Sandler Morrill, *Booms, Busts, and Divorce*, 11 B.E. J. ECON. ANALYSIS & POL’Y 1, 3 (2011).

<sup>64</sup> Kerwin Kofi Charles & Melvin Stephens, Jr., *Job Displacement, Disability, and Divorce*, 22 J. LAB. ECON. 489, 490 (2004).

<sup>65</sup> Liana C. Sayer et al., *She Left, He Left: How Employment and Satisfaction Affect Women’s and Men’s Decisions to Leave Marriages*, 116 AM. J. SOC. 1982, 1985 (2011).

<sup>66</sup> See W. BRADFORD WILCOX, *THE GREAT RECESSION AND MARRIAGE* 4 (2011), available at <http://www.thefamilywatch.org/doc/doc-0221-es.pdf> (reporting that “divorce rates have fallen since the Great Recession began”). See also D’Vera Cohn et al., *Barely Half of U.S. Adults Are Married—A Record Low: New Marriages Down 5% from 2009 to 2010*, PEW RES. SOC. & DEMOGRAPHIC TRENDS (Dec. 14, 2011), <http://www.pewsocialtrends.org/2011/12/14/barely-half-of-u-s-adults-are-married-a-record-low/> (“Fallout from the Great Recession may be a factor in the recent decrease in newlyweds . . .”).

<sup>67</sup> See Goldin & Katz, *supra* note 29, at 747–48.

PERCENTAGE OF BIRTHS TO NEVER-MARRIED MOTHERS:<sup>68</sup>

The results are even more dramatic when race is taken into account. The non-marital birth rate for white college graduates has remained at two percent, with no change in the twenty-five year period that started in the mid-eighties.<sup>69</sup> The delay in marriage produced a delay in births but not a lack of emphasis on marriage. While marriage decreased for all groups between 1970 and today, marriage has declined the least for college graduates, and, today, women with college degrees are the most likely to marry and the most likely to raise their children within a two-parent family.<sup>70</sup> Indeed, sociologist Brad Wilcox has found that a fourteen-year-old daughter of college graduates is more likely to be raised in a two-parent home in 2006–08 than in the early eighties.<sup>71</sup>

For those without college degrees, in contrast, a delay in marriage has meant an increase in non-marital births—and in those likely to never marry. For the most disadvantaged women, non-marital birth rates were already high in 1982.<sup>72</sup> For African Americans without a high school degree, for example, the non-marital birth rate increased from 77% to 96%. The group that experienced the largest increase in the period from the mid-eighties until 2008, however, was white high school graduates. The non-marital birth rate for this group was 5% in 1982, just barely higher than the rate for college graduates. By 2008, the rate had increased to 34%, close to the 43% rate for white high school dropouts. African American high school graduates also became much more likely to give birth outside of marriage during the same period, with the percentage of non-marital births rising from 48% to 75%.<sup>73</sup> Moreover, the huge recent expansion in the non-marital birth rate has largely been to women in their twenties; teen births have fallen across the board.<sup>74</sup>

<sup>68</sup> NAT'L MARRIAGE PROJECT, *supra* note 21, at 23.

<sup>69</sup> *Id.* at 56.

<sup>70</sup> *Id.* at 58.

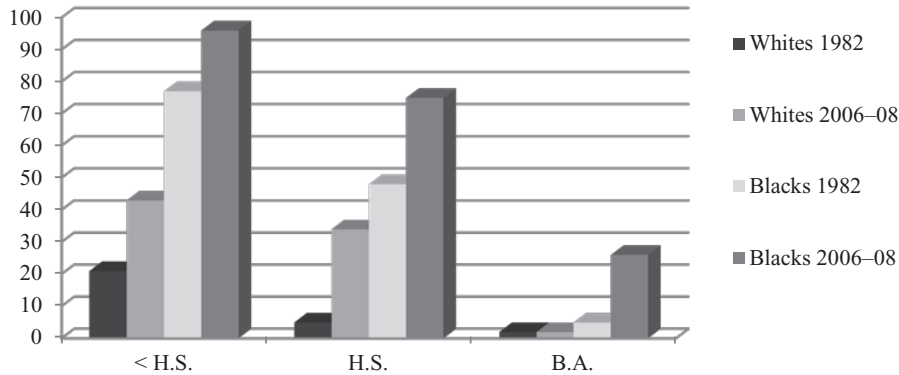
<sup>71</sup> *Id.* at 57.

<sup>72</sup> *Id.* at 23.

<sup>73</sup> *Id.* at 56.

<sup>74</sup> STEPHANIE J. VENTURA, DIVISION OF VITAL STATISTICS, CHANGING PATTERNS OF NONMARITAL CHILDBEARING IN THE UNITED STATES 2 (Nat'l Ctr. For Health Statistics ed., 2009), available at <http://www.cdc.gov/nchs/data/databriefs/db18.pdf>.

PERCENTAGE OF BIRTHS TO UNMARRIED WOMEN BY RACE, EDUCATION, AND YEAR:<sup>75</sup>



These results suggest that college education has shifted family formation, including both marriage and childbearing, into the thirties. In the meantime, the women who do not complete college are ready to bear children much earlier. This has led to two sharply different search strategies: college-graduate women continue to wait to have children until they have found the right male partner, while non-college graduates may decide to have children whether or not a suitable partner is in the offing.

The result closely tracks the changing job fortunes that, first, increased the divorce rate and, then, persuaded the children of divorce that marriage simply does not work. Brad Wilcox captures the change in attitudes. He asked a group ranging from twenty-five to forty-four whether “marriage has not worked out for most of the people they know.”<sup>76</sup> The results correlate strongly with education. Of those with the least education, over half (53%) say yes, marriage has not worked out for most of the people they know. Of those with moderate amounts of education, the number drops to 43%. Of the most highly educated, only 17% agree; that is, 83% indicate that marriage has worked for most of the people they know.<sup>77</sup>

These figures also correlate with class-based shifts in attitudes toward divorce, sexuality and non-marital births. Between the early eighties and today, the least educated have become thirteen percent less likely to believe that divorce should be more difficult to obtain, where the most educated have moved in the opposite direction, believing that divorce should be more difficult to get.<sup>78</sup> Asked whether pre-marital sex is “always wrong,” a majority of all groups disagree and the better educated, today and twenty-five years ago, are more likely to disagree. But over those twenty-five years, the least educated have adopted more flexible attitudes on the issue while the most educated have become somewhat more conservative.<sup>79</sup> And, unsurprisingly, college graduates

<sup>75</sup> NAT’L MARRIAGE PROJECT, *supra* note 21, at 56.

<sup>76</sup> *Id.* at 40.

<sup>77</sup> *Id.*

<sup>78</sup> *Id.* at 29.

<sup>79</sup> *Id.* at 30.

are much more likely to report that they would be “embarrassed” by a non-marital pregnancy than those farther down the educational ladder.<sup>80</sup>

Ethnographic studies capture the changes in behavior and thinking that underlie the changes in attitude. Wilcox, along with a number of other sociologists, describes the change as one from institutional marriage to “soul mate” marriage. He observes that:

[M]any Americans have moved away from identifying with an “institutional” model of marriage, which seeks to integrate sex, parenthood, economic cooperation, and emotional intimacy in a permanent union. This model has been overwritten by the “soul mate” model, which sees marriage as primarily a couple-centered vehicle for personal growth, emotional intimacy, and shared consumption that depends for its survival on the happiness of both spouses.<sup>81</sup>

When looking at the shift in attitudes that underlie decisions not to marry, however, something else emerges: a conviction that institutional marriage is unlikely to work and that it is unlikely to do so, at least in part, because men are just too unreliable. When Wilcox finds that less-educated Americans do not see marriage working for those around them, he is describing the same conclusion Amato found: for those further down the economic ladder, good marriages have become harder to achieve, financial stress has contributed more than it did in earlier times to family instability, and the difficulties associated with making marriage work have persuaded more women to have children on their own.

The most celebrated study of these attitudes is Kathy Edin’s.<sup>82</sup> Other scholars often cite Edin for the conclusion that poor women fail to marry not because they do not value marriage, but because they value it too much. She quotes poor women who believe that they should wait to marry until they can achieve the “white picket fence,” that is, until they and their partner can afford a stable residence, a car and bills that are paid *every* month. Sociologists refer to these attitudes as a “marriage bar,” that is, “the standard of living a couple is expected to obtain before they marry.”<sup>83</sup> Some studies suggest that the greater the male income inequality in a community, the higher the number of couples that will fail to meet the marriage bar.<sup>84</sup> McLanahan and Percheski, for example, explain that the marriage bar is likely to be “a function of the median income of married couples” and it is therefore likely to rise “as marriage becomes increasingly concentrated among high-income couples.”<sup>85</sup>

This notion that a single mother is somehow better off on her own or cohabitating than married mystifies observers. Almost every study indicates that poor couples are better off pooling their resources than fending for themselves, and that, for all but the most violent couples, the children tend to do better if their parents stay together.<sup>86</sup> What emerges from Edin’s book is not just a refusal to marry because it does not meet a soul mate ideal, but rather

<sup>80</sup> *Id.* at 31.

<sup>81</sup> *Id.* at 38.

<sup>82</sup> See generally KATHRYN EDIN & MARIA KEFALAS, *PROMISES I CAN KEEP: WHY POOR WOMEN PUT MOTHERHOOD BEFORE MARRIAGE* (2005).

<sup>83</sup> McLanahan & Percheski, *supra* note 57, at 261.

<sup>84</sup> See, e.g., Eric D. Gould & M. Daniele Paserman, *Waiting for Mr. Right: Rising Inequality and Declining Marriage Rates*, 53 J. URBAN ECON. 257, 257–58 (2003).

<sup>85</sup> McLanahan & Percheski, *supra* note 57, at 261.

<sup>86</sup> See, e.g., Wax, *supra* note 4, at 30.



wariness of the potentially high costs of marriages that fail. When Edin examines unstable relationships, she emphasizes that:

[M]oney is seldom the primary reason mothers give to explain why they and their children's fathers are no longer together. . . . It is the drug and alcohol abuse, the criminal behavior and consequent incarceration, the repeated infidelity, and the patterns of intimate violence that are the villains looming largest in poor mothers' accounts of relational failure.<sup>87</sup>

In short, the biggest issue is the behavior of men at the losing end of male-status hierarchies.

With these expectations, women need independence to protect themselves from violent and unfaithful men, and they see the inability to rely on stable behavior as a potential threat to their own and their children's well-being. Edin thus explains the desire for greater financial stability *before* marriage as a desire for female independence. Many of the women she interviews do say that they want a house and car, ideally titled in their name alone, before they marry. Edin emphasizes that they want these assets so that they "can control their mate's behavior with the threat—spoken or not—that they'll end the marriage and remove the children if their husband cheats, beats them, fails to stay working, or tries to make all the decisions."<sup>88</sup> Financial independence means freedom from the dominating behavior of a husband. Moreover, when the women do complain about money, it is often about the failure of their partner to hold a steady job or about perceptions that he has become a net drain on the family's finances. She describes one woman who told her, "He's not around no more. I got rid of him. . . . He was only here to sleep—didn't want to pay no bills, didn't want to do nothing. When he was here all he did was fight and argue and drink. I had to get rid of [him]."<sup>89</sup> The women in Edin's study often see the father of their children as someone who may meet some of their needs at the expense of the children. Edin concludes that "few mothers are willing to endanger the resources they and their children desperately need just to keep the baby's father around."<sup>90</sup>

In these accounts, low wages are a small part of the explanation for relationship instability and the refusal to marry. Yet, steady employment would certainly contribute to more responsible behavior. The opportunities for such employment, however, have declined. For the population as a whole, more than fourteen percent of whites and a quarter of African American men reported fifty-two weeks or more of non-work between the ages of twenty-four and twenty-six.<sup>91</sup> For the least-advantaged men, prison has become the single institution most likely to shape the transition to adulthood. Steven Raphael reports that:

Young men in their early twenties are especially likely to have served time. Their risk of imprisonment has tripled between 1979 and 2001. For all racial and ethnic groups, less-educated men are considerably more likely to be incarcerated than more

<sup>87</sup> See EDIN & KEFALAS, *supra* note 82, at 81.

<sup>88</sup> *Id.* at 112.

<sup>89</sup> *Id.* at 77 (internal quotation marks omitted).

<sup>90</sup> *Id.* at 81.

<sup>91</sup> See *Fast Facts: Work and Education*, NETWORK ON TRANSITIONS TO ADULTHOOD, [http://transitions.s410.sureserver.com/?page\\_id=858](http://transitions.s410.sureserver.com/?page_id=858) (last visited Mar. 19, 2013).

educated men. However, less-educated black men have the highest incarceration rates. The author calculates, using California prison data, that 90% of black male high school dropouts now aged 45 to 54 have been or are in jail.<sup>92</sup>

The women in their communities have reason to be wary. Yet, these women do not want to forego child rearing entirely. As they achieve a measure of independence, they do demand more before they will marry. And as their prospects improve, while the opportunities for less-skilled men decline, marriage is likely to be a casualty. The reason ultimately has to do with the way that growing male inequality combines with gender change to remake the attitudes of rich and poor in parallel directions that drive us farther apart.

For the approximately two-thirds of the population that does not have a college degree, an increasing number of men do not have the steady, adequately paying jobs that allow them to provide the foundation for a successful family life. Nor are working-class men who feel like failures in the job market prepared to play roles backing up their wives and children. College-educated artists or faculty spouses may be willing to dote on their children while their wives take on the “breadwinning” role, but less-secure men are more likely to chafe at the perceived loss in status. Financially independent women who both bring the bulk of the family income and assume the majority of the domestic tasks do not want—or need—men who are unable to support their families, emotionally or financially.

### III. WHERE DO WE GO FROM HERE?

There are three possible visions of the future. The first is that women’s growing power will eclipse men at every level and when that happens, middle-class women will join with working-class women in dismantling marriage. Women’s educational achievement already exceeds men’s in the nation as a whole, and women will soon dominate professions such as law and medicine.<sup>93</sup> Single, childless women ages twenty-two to thirty already out earn male peers of the same age in the majority of large U.S. cities.<sup>94</sup> If women out earn men at the top as well as the bottom of the country’s income ladder, marriage may no longer correspond so closely to class or confer the same degree of financial advantage. The result could be a reorganization of society to provide greater support for childrearing outside of the two-parent family.

Today, the class-based disparity in marriage rates is troubling, at least as a matter of social policy, because elite groups continue to provide for children overwhelmingly through committed two-parent relationships, often opposing support for other families. Welfare reform is only the most visible of the many measures that have reduced the support for single-parent families in the name

<sup>92</sup> Steven Raphael, *Early Incarceration Spells and the Transition to Adulthood*, 31 NETWORK ON TRANSITIONS TO ADULTHOOD: POL’Y BRIEF 1 (Sept. 2006), <http://www.transad.pop.upenn.edu/downloads/raphael-formatted.pdf>. See also Steven Raphael, *Early Incarceration Spells and the Transition to Adulthood*, in *THE PRICE OF INDEPENDENCE: THE ECONOMICS OF EARLY ADULTHOOD*, *supra* note 53, at 278, 278 (demonstrating that incarceration delays or derails more conventional aspects of that transition such as employment, education, marriage, and living independent).

<sup>93</sup> Mundy, *supra* note 44.

<sup>94</sup> *Id.*

of marriage promotion.<sup>95</sup> Even some programs undertaken in the guise of helping single mothers, such as child-support enforcement, in fact, make matters worse.<sup>96</sup> It is possible to envision an alternative future in which family form is less critical to children's success. Martha Fineman, for example, argues that families vary and a state that supports the welfare of children needs to support child rearing in all families, married or not.<sup>97</sup> If single-parent families were not associated with class disadvantage, it is easier to imagine a societal reorganization that devoted greater shared resources to child well-being.

We are skeptical, however, that such a future is politically feasible for at least two reasons. The first is the role of increasing inequality in concentrating political power in the hands of very wealthy conservatives, who are overwhelmingly male.<sup>98</sup> Even if women have gained increasing income and influence in society as a whole, the same has not been true at the top. As we noted above, the gendered wage gap has *increased* for college graduates since 1990. A substantial reason is that the largest gender gaps tend to be in financial-sector jobs and those have shown some of the largest increases in compensation over the last two decades.<sup>99</sup> The Financial Crisis Inquiry Commission found, for example, that between 1932 and 1980, compensation inside the financial indus-

<sup>95</sup> See, e.g., Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (codified at 42 U.S.C. § 1305 (2012)); *Temporary Assistance for Needy Families (TANF) Overview*, HHS.GOV/RECOVERY, <http://www.hhs.gov/recovery/programs/tanf/tanf-overview.html> (last visited Mar. 19, 2013) (explaining that a major goal of TANF is to "reduc[e] the dependency of needy parents by promoting job preparation, work and marriage").

<sup>96</sup> See, e.g., Harris, *supra* note 6, at 158; see also Deborah Harris, *Child Support for Welfare Families: Family Policy Trapped in its Own Rhetoric*, 16 N.Y.U. REV. L. & SOC. CHANGE 619, 619-20 (1988) ("[T]he child support enforcement system is fundamentally flawed, imposing tremendous burdens on welfare mothers without saving welfare dollars."); *Cutting Programs for Low-Income People Especially Hurts Women and Their Families*, NAT'L WOMEN'S L. CENTER (Dec. 17, 2012), <http://www.nwlc.org/resource/cutting-programs-low-income-people-especially-hurts-women-and-their-families> (explaining that single moms, relying on welfare, will be disproportionately hurt by budget cuts involved in fiscal cliff discussions).

<sup>97</sup> See MARTHA ALBERTSON FINEMAN, *THE AUTONOMY MYTH: A THEORY OF DEPENDENCY* 140-41 (2004); McCLAIN, *supra* note 17, at 131, 154 (discussing the importance of providing support for children irrespective of family form as a matter of equal citizenship); see also EICHNER, *supra* note 17, at 5 (suggesting that the state should balance support for marriage against the minimum needs of all children).

<sup>98</sup> See Thomas Frank, *Too Smart to Fail: Notes on an Age of Folly*, BAFFLER NO. 19, [http://thebaffler.com/notebook/2012/03/too\\_smart\\_to\\_fail](http://thebaffler.com/notebook/2012/03/too_smart_to_fail) (last visited Mar. 19, 2013); see also David A. Matsa & Amalia R. Miller, *Chipping Away at the Glass Ceiling: Gender Spillovers in Corporate Leadership* 1 (Rand Labor and Population, Working Paper No. WR-842, 2011), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1709462](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1709462) (finding that in the corporate realm, only six percent of top corporate executives are female); Matt Bai, *How Much Has Citizens United Changed the Political Game?*, N.Y. TIMES (July 17, 2012), [http://www.nytimes.com/2012/07/22/magazine/how-much-has-citizens-united-changed-the-political-game.html?pagewanted=all&\\_r=0&pagewanted=print](http://www.nytimes.com/2012/07/22/magazine/how-much-has-citizens-united-changed-the-political-game.html?pagewanted=all&_r=0&pagewanted=print).

<sup>99</sup> See Frank Bass, *Shining Shoes Best Way Wall Street Women Outearn Men*, Bloomberg (Mar. 16, 2012, 10:01 AM), <http://www.bloomberg.com/news/2012-03-16/shining-shoes-best-way-wall-street-women-outearn-men.html> ("The six jobs with the largest gender gap in pay and at least 10,000 men and 10,000 women were in the Wall Street-heavy financial sector: insurance agents, managers, clerks, securities sales agents, personal advisers and other specialists."); see also Lawrence Mishel & Natalie Sabadish, *It's Executives and the*

try and out was roughly equal.<sup>100</sup> Beginning in 1980, pay levels grew apart, and by 2007, financial sector compensation was more than eighty percent greater than in other businesses.<sup>101</sup> Indeed, some scholars maintain that the growth of the financial sector, together of course with the increase in CEO compensation tied to stock options, is the major cause of increasing inequality more generally.<sup>102</sup> As long as these factors hold, women are unlikely to catch up with men at the top.

Second, conservatives are likely to oppose more egalitarian policies, and elite conservative women seem as likely as elite conservative men to prefer marriage-focused policies and to oppose more egalitarian measures generally. Political science data show that elites are more polarized in their views than the rank and file, and that elite conservative Republican men and women tend to be much more supportive of hierarchy and the traditional family than other groups in society.<sup>103</sup>

The second possible vision for the future is to bring back patriarchy. The “war on women,” which targets women’s reproductive autonomy, seems designed to increase the risks of sexual intercourse by re-stigmatizing women’s sexual autonomy, particularly outside of marriage.<sup>104</sup> Conservative rhetoric focusing on the importance of the traditional married family also emphasizes the importance of wives’ deference to their husbands.<sup>105</sup> We have argued elsewhere that custody and parentage cases in more conservative parts of the country have given fathers more influence, in effect making sexually independent women more subject to male authority.<sup>106</sup>

We believe that these efforts have had increasingly harmful consequences on poor women. They have reduced access to contraception and abortion and

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*Finance Sector Causing Surging 1% Income Growth!*, WORKING ECON. (May 2, 2012, 3:22 PM), <http://www.epi.org/blog/ceo-pay-finance-sector-income-inequality/>.

<sup>100</sup> THE FINANCIAL CRISIS INQUIRY COMM’N, THE FINANCIAL CRISIS INQUIRY REPORT 61 (2011).

<sup>101</sup> *Id.*

<sup>102</sup> See, e.g., Carlo Panico, Antonio Pinto & Martín Puchet Anyul, *Income Distribution and the Size of the Financial Sector: A Staffian Analysis*, 36 CAMBRIDGE J. ECON. 1455, 1455 (2012); see also Lawrence Mishel & Natalie Sabadish, *CEO Pay and the Top 1%*, ECON. POL’Y INST. (May 2, 2012), <http://www.epi.org/publication/ib331-ceo-pay-top-1-percent/>.

<sup>103</sup> See, e.g., Morris P. Fiorina & Samuel J. Abrams, *Political Polarization in the American Public*, 11 ANN. REV. POL. SCI. 563, 565 (2008) (agreeing that elites are more polarized but disputing the evidence of mass polarization); Geoffrey C. Layman, Thomas M. Carsey & Juliana Menasce Horowitz, *Party Polarization in American Politics: Characteristics, Causes, and Consequences*, 9 ANN. REV. POL. SCI. 83, 104 (2006) (explaining that increased polarization among party activists increases mass polarization); Ted G. Jelen & Clyde Wilcox, *Causes and Consequences of Public Attitudes Toward Abortion: A Review and Research Agenda*, 56 POL. RES. Q. 489, 495 (2003) (arguing that characteristics of legislators, not the characteristics of voters in the district, best predicted votes on abortion-related issues and legislators tended to have more extreme views than their constituents).

<sup>104</sup> See, e.g., Elizabeth Wood, *Sexual Freedom, The War on Women, and Nuclear (Family) Destruction*, WOODHULL SEXUAL FREEDOM ALLIANCE (Apr. 6, 2012), <http://www.woodhullalliance.org/2012/sex-in-the-public-square/sexual-freedom-the-war-on-women-and-nuclear-family-destruction/>.

<sup>105</sup> See W. Bradford Wilcox & Steven L. Nock, *What’s Love Got To Do With It? Equality, Equity, Commitment and Women’s Marital Quality*, 84 SOC. FORCES 1321, 1322–23 (2006).

<sup>106</sup> See Carbone, *supra* note 6, at 878–79; Carbone & Cahn, *supra* note 6, at 220.

contributed to the increased class-based disparities in unintended pregnancy.<sup>107</sup> Access to the Pill serves to increase women's earning power; restrictions on that access also threaten women's economic autonomy.<sup>108</sup> But, we have no reason to believe that conservatives will succeed in reversing women's educational and income gains, which are due in part to larger economic forces. Without that, they are unlikely to bring back an emphasis on marriage or to succeed in wholesale limitations on contraception.

The third—and much preferred—solution is greater equality in society more generally. That will require more jobs, particularly more stable blue-collar jobs for men, and a reknitted social safety net that encourages family stability when employment stability is infeasible. Complementing greater economic stability should be more egalitarian gender attitudes that allow for the renegotiation of the relationship between work and family.

Inequality is a problem in itself. Greater societal inequality, first, disproportionately affects men on the losing end of the socio-economic ladder, and, then, because it writes off such a high proportion of men, affects women and children through its negative feedback effects on family life. Cross-cultural studies of inequality indicate that the higher the inequality in a society, the higher the rates of chronic unemployment, imprisonment and violence, which disproportionately affect men's attractiveness as intimate partners, teen births, and mental illness and substance abuse more generally.<sup>109</sup> Moreover, examinations of inequality indicate that the greater the inequality in male incomes, the lower marriage rate at age thirty—for both the winners and the losers in the income hierarchy.<sup>110</sup> While high-status men will still marry more than low-status men, the *high-status* men are less likely to be married in cities with higher-income inequality than comparable men elsewhere.<sup>111</sup> Greater female-income inequality has no such effect. We suspect, therefore, that strengthening families will require both restraining the growth of the one percent and improving the conditions for everyone else. Such a wholesale societal reconstruction is beyond the scope of this paper, but it is one that necessarily involves a focus on employment. "Jobs now" should be the true family values slogan.

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<sup>107</sup> See Rachel Benson Gold, *Rekindling Efforts to Prevent Unplanned Pregnancy: A Matter of "Equity and Common Sense"*, 9 GUTTMACHER POL'Y REV. 2, 3–4 (2006); see also HEATHER D. BOONSTRA ET AL., ABORTION IN WOMEN'S LIVES 25–26 (Guttmacher Inst. ed., 2006) ("Between 1994 and 2001, the unintended pregnancy rate rose 29% among women living below the poverty level and 26% among women living between 100% and 200% of the poverty level, but fell 20% among more affluent women.").

<sup>108</sup> Martha J. Bailey, Brad Hershbein & Amalia R. Miller, *The Opt-In Revolution? Contraception and the Gender Gap in Wages* 1–2 (Nat'l Bureau of Econ. Research, Working Paper No. 17,922, 2012), available at <http://www.nber.org/papers/w17922>.

<sup>109</sup> But see KATE PICKETT & RICHARD WILKINSON, THE SPIRIT LEVEL: WHY GREATER EQUALITY MAKES SOCIETIES STRONGER 67–69 (2009) (indicating that studies have shown that income inequality is not linked to mental illness in men, but is correlated with mental illness in adult women).

<sup>110</sup> See Gould & Paserman, *supra* note 84, at 259, 263. Gould & Paserman estimate that differences in male wage inequality can account for up to thirty percent of the decline in marriage over the past few decades. Their findings hold across a variety of different educational groups and suggest that both men and women delay marriage in response to greater male inequality, but not greater female inequality. *Id.* at 259.

<sup>111</sup> *Id.* at 259.

A big part of the solution for the problems of male inequality is more and better jobs. We also need to rebuild a safety net that encourages family stability without reifying male roles. We have created a society that writes off a high percentage of men through chronic unemployment and high rates of imprisonment for minor offenses. Rebuilding equality begins with reconstructing infrastructure to support stability. This means innovative entrepreneurship, a more flexible workplace, and a social safety net that includes health insurance decoupled from employment, unemployment insurance that allows employment flexibility without destroying community and family, and education that develops skills.

Instability in employment has been a major factor undermining family stability and demoralizing the unemployed.<sup>112</sup> The best jobs in years past provided continuity and the possibility of upward mobility—those who stayed could expect regular raises and in many cases retraining and promotions.<sup>113</sup> Today, the most successful employees demonstrate the ability to acquire additional education and training on their own, and the most vulnerable have the least ability to deal with a layoff through the acquisition of new skills. Young people finishing high school without practical skills or the means to afford higher education and the long-term unemployed may, accordingly, be among the most vulnerable.

Moving forward requires a focus on ways to prompt greater employment throughout the economy and to ease workers' transitions between jobs. They include:

*Guaranteeing job creation.* The economist Hyman Minsky, for example, saw job creation as a consistent problem of modern technological economies and proposed that the government become an employer of the last resort.<sup>114</sup> Others have proposed counter-cyclical policies, rooted in the non-profit sectors, including social entrepreneurs. These programs target the least employable and aim for full-employment economies.<sup>115</sup>

*Entrepreneurship.* Free market advocates, aghast at greater government spending, tend to focus on small businesses.<sup>116</sup> Such businesses have led in job creation in recent years, and they often spur technological advancement that in turn produces more jobs. Small business development, however, especially in

<sup>112</sup> See Farber, *supra* note 53, at 57. For a discussion of the impact on family stability, see Hellerstein & Morrill, *supra* note 63, at 3; see also Charles & Stephens, *supra* note 64, at 490 (individual layoffs are more likely to increase divorce rates than plant closings or disability); Sayer et al., *supra* note 65, at 1985 (noting that employment affects men and women's expectations about marriage).

<sup>113</sup> See KALLEBERG, *supra* note 55, at 94. Kalleberg also explains that employment instability has increased more for men than women, and more for the less educated and minorities. *Id.* at 93.

<sup>114</sup> HYMAN P. MINSKY, *STABILIZING AN UNSTABLE ECONOMY* xxv (1986).

<sup>115</sup> See, e.g., PAVLINA R. TCHERNEVA, *LEVY ECON. INST. OF BARD COLL., FULL EMPLOYMENT THROUGH SOCIAL ENTREPRENEURSHIP: THE NONPROFIT MODEL FOR IMPLEMENTING A JOB GUARANTEE 2* (2012).

<sup>116</sup> See, e.g., Don Peck, *Can the Middle Class Be Saved?*, ATLANTIC (Sept. 2011), <http://www.theatlantic.com/magazine/archive/2011/09/can-the-middle-class-be-saved/8600/3/> (calling for "a combination of more federal investment in scientific research, perhaps bigger tax breaks for private [research and development] spending," along with a variety of corporate tax breaks and incentives).

the tech sector, often proceeds from publically supported investment in basic research, effective tech transfer from university labs to private development, a critical mass of skilled workers, and effective supply networks. Assembling the parts, accordingly, requires regional development plans and assembling the right mix of public and private support.

*Investing in human capital.* Claudia Goldin and Lawrence Katz argue that the United States achieved global dominance through investment in education, producing the most educated population in the world.<sup>117</sup> They also conclude that the United States has lost ground and now lags behind many other countries.<sup>118</sup> Class-based changes in family structure create a vicious cycle, further reducing the resources that affect the cognitive development of young children at the bottom of the socio-economic ladder.<sup>119</sup> Comprehensive reform would start with publically subsidized preschools and other forms of early-childhood education and end with examination of the affordability of higher education. Consideration of the life paths of young men in their late teens and early twenties should also consider the process of job-related-skill acquisition and training, and the role of institutions such as the military and universal service. For example, while the manufacturing sector has lost millions of jobs and has lost its virtual guarantee as a secure source of jobs, the industry still needs skilled machinists.<sup>120</sup> Yet, the paths from high school graduation into the training necessary to secure such jobs is haphazard. Training efforts that target working-class men might emphasize greater investment in community colleges, industry-high school partnerships, or apprenticeship programs tied to job placement.

*Reknitting the safety net.* Even for those who secure full-time employment, the rate of employment turnover has increased in the economy as a whole, making the ability to acquire new skills, seek new employment, and manage the period in-between jobs more critical for every social class. Henry Farber, for example, finds that “[b]y virtually any measure[,] more recent cohorts of male workers have been with their current employer for less time at specific ages.”<sup>121</sup> Greater emphasis on small business and entrepreneurship is likely to increase employment instability and make the transitions more critical for family stability. Greater unemployment assistance, perhaps in the form of opportunities for retraining or returns to school, would assist both individual and family developments—so would more flexible programs that make it easier for both men and women to combine work, study, and parenting.

All of this requires thinking about how the pieces fit together to guarantee at least a minimum level of economic security. Yale political scientist Jacob Hacker argues that Americans face “much greater economic risk” from less-secure pensions, health care, and public programs designed for protection, yet, paradoxically, security (or defenses against risk) is critical in providing the

<sup>117</sup> See GOLDIN & KATZ, *supra* note 31, at 130.

<sup>118</sup> *Id.* at 325–28.

<sup>119</sup> Robert H. Bradley & Robert F. Corwyn, *Socioeconomic Status and Child Development*, 53 ANN. REV. PSYCHOL. 371, 375 (2002); see also SARA McLANAHAN & GARY SANDEFUR, *GROWING UP WITH A SINGLE PARENT: WHAT HURTS, WHAT HELPS* 2–3 (1994).

<sup>120</sup> See, e.g., Whoriskey, *supra* note 37.

<sup>121</sup> Farber, *supra* note 53, at 57.

basis for economic opportunity.<sup>122</sup> This solution may rest on the system of “flexicurity”<sup>123</sup> that is being developed in Europe. Flexicurity seeks to combine employer flexibility with worker security. Doing so requires rethinking the relationship between public and private. The essential elements of such a model require universal, affordable, portable health insurance, which ideally should be separated from employment. It also requires a more secure and portable pension system, more generous unemployment insurance and greater opportunities (as we have emphasized above) to acquire new skills, and education over the course of a lifetime. If employment is more transient and employers invest little in their workers, then a revitalized social safety net needs to fill in the gaps.<sup>124</sup>

#### CONCLUSION

The creation of greater inequality, the shredding of the social safety net, and the increasing cost of higher education are integrally related to the changing structure of the family. Marriage rates by themselves have a variety of meanings, but class-based increases in family instability have one overriding consequence: the creation of a less-just society with diminished prospects for a large percentage of our children. What we really need to do is increase our investments in children, employment stability for men and women, and healthy communities, and stop pretending that family structure is simply a matter of morals or will.

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<sup>122</sup> JACOB S. HACKER, *THE GREAT RISK SHIFT: THE NEW ECONOMIC INSECURITY AND THE DECLINE OF THE AMERICAN DREAM* 165–66 (2008).

<sup>123</sup> See, e.g., PAUL VANDENBERG, *IS ASIA ADOPTING FLEXICURITY? A SURVEY OF EMPLOYMENT POLICIES IN SIX COUNTRIES* iii (Int’l Labour Office ed., 2008), available at <http://www.ilo.org/public/english/employment/download/elm/elm08-4.pdf> (flexicurity “describes the nexus between the capacity to adapt the workforce to changes in the economy and the capacity to maintain working and living conditions of the workforce”); see also JOSHUA COHEN & CHARLES SABEL, *FLEXICURITY* 11–12 (2009), available at [http://www.stanford.edu/group/scspi/\\_media/pdf/pathways/spring\\_2009/CohenSabel.pdf](http://www.stanford.edu/group/scspi/_media/pdf/pathways/spring_2009/CohenSabel.pdf).

<sup>124</sup> HACKER, *supra* note 122, at 182 (advocating more portable benefits).