

# INSTITUTIONALIZING SOCIETY'S COMMITMENT TO CHILD WELL-BEING

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## I. INTRODUCTION: SOCIETY'S INSTITUTIONAL COMMITMENT TO THE BEST INTERESTS OF CHILDREN

“Protecting children is a top priority” was a headline in an American newspaper recently.<sup>1</sup> The headline and accompanying commentary—written by a member of the Minnesota state legislature—expressed a sentiment that is widely supported in the United States of America and in most nations around the world. Similarly, the director of a British child services agency recently declared: “We need to think about the child’s physical safety, social safety, emotional safety—their whole wellbeing both at home and in the school environment.”<sup>2</sup> Again, the sentiment is nearly universal. In principle, nearly everyone agrees that the well-being of children should be given top priority not only in our personal and family lives, but even more so in matters of public policy such as government services and programs.<sup>3</sup>

However, in reality, do we (as societies, families, and individuals) actually give top priority to providing for and protecting children? If so, one of the first things we would do would be to ensure that the family environment (the environment in which children spend most of their time and in which most of their socialization and development occurs) is the most beneficial for their most favorable and complete development. The family environment and social institution that is the most advantageous for children is the marital family.<sup>4</sup> Sadly, however, dual-gender, gender-integrating

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1. Ron Kresha, *Protecting Children Is a Top Priority*, MORRISON COUNTY RECORD, (Apr. 1, 2016), <http://mcrecord.com/2016/04/01/protecting-children-is-a-top-priority/>.
2. Sarah Jewell, *Children Give Safety Top Priority*, THE GUARDIAN, <https://www.theguardian.com/children/matters/story/0,,1892002,00.html> (last visited Oct. 2, 2017) (quoting Anne Whiteley, director of children and young people’s services for Devon).
3. See, e.g., Debra Lindsey Prince, Kaye Pepper, & Kay Brocato, *The Importance of Making the Well-Being of Children in Poverty a Priority*, 34 EARLY CHILDHOOD ED. J. 21 (2006).
4. See *Cohabitation Rights Bill [HL]*, at 2073, <https://publications.parliament.uk/pa/ld201415/ldhansrd/text/141212-0002.htm>, (Dec. 12, 2014, 1:26 PM), Baroness Deech (CB): (“[C]hildren...we know, from studies of cohabitation, will do worse at school and only one-third of whom can expect to be living with both unmarried parents by the time they are 16[.] The damage to those children arises from their social situation, not the law. Cohabiting couples with children

marriages and marital families seem to be diminishing, marginalized, and devalued today.

For example, the highly respected University of Sydney law professor and former President of the International Society for Family Law, Professor Patrick Parkinson, wrote in 2012: “For years, the rhetoric of progressive politics has been that family structure does not matter and that the law should equally recognise [sic] and value all kinds of family, not just the “traditional” family consisting of a married couple with children. Many have been dismissive of marriage as an institution.”<sup>5</sup> He added: “*Marriage is a mere shadow of what it used to be, legally and culturally . . . . Robbed of its distinctiveness, and detached from its cultural and religious roots, marriage as an institution is unlikely to retain its cultural importance and vitality.*”<sup>6</sup>

That is a very sobering prediction from a very knowledgeable expert. Truly, marriages are not perfect; all marriages (and all persons in them) have blemishes and flaws. However, as imperfect as they are, marriages overall and categorically provide the best environment in which adult intimate relations may be nurtured and also the best environment in which children may be born and raised.<sup>7</sup> Indeed, one might say about the marital family compared to other kinds of family forms what Churchill said about democracy compared to other forms of government—that it “is the worst form . . . except [for] all those other forms that have been tried from time to time.”<sup>8</sup> Because marriage provides such an important environment for childrearing, the declining practice and integrity of marriage and eroding public support for marriage is of great concern for advocates of the best interests of children.

The best measure of any society’s commitment to the well-being of its children is its commitment to and support of the institution of marriage. That

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are more likely to break up than childless cohabitants or married couples, and they are less likely to conclude their cohabitation in marriage.”)

5. Patrick Parkinson, *About Time We All Cared More About Marriage*, The Sydney Morning Herald, (Aug. 24, 2012), <http://www.smh.com.au/federal-politics/political-opinion/about-time-we-all-cared-more-about-marriage-20120823-24p2g>.
6. *Id.* (emphasis added). (In a presentation made at the Brigham Young University Law School in January 2016, Professor Parkinson opined that marriage as we know it and as it has been known in western societies for centuries will not survive.)
7. See, e.g., Ryan Anderson, *Marriage: What It Is, Why It Matters, and the Consequences of Redefining It*, THE HERITAGE FOUNDATION (Mar. 11, 2013), <http://www.heritage.org/marriage-and-family/report/marriage-what-it-why-it-matters-and-the-consequences-redefining-it>; see also *Marriage Best Environment to Raise Children, says Church*, CHRISTIANITY TODAY, (Jan. 8, 2007, 10:08PM), <https://www.christiantoday.com/article/marriage.best.environment.to.raise.children.says.church/9006.htm>; *Marriage and Family*, THE HERITAGE FOUNDATION, <http://www.heritage.org/marriage-and-family> (“Marriage and family are the building blocks of all human civilization and the primary institutions of civil society.”).
8. WINSTON S. CHURCHILL, *Winston S. Churchill: His Complete Speeches, 1897–1963*, 7566 (Robert Rhodes James ed., 7th vol., Nov. 11, 1974).

is because healthy marriage generally provides the most secure and most promising family setting into which children may be born and in which children can most safely and successfully be reared. The contributions of both mothers and fathers are important for children. No other social relationship, institution, government agency, or program benefits children as much as marriage does.<sup>9</sup>

Where access to marriage is unduly restricted, marital stability and longevity is limited, or where marriages are severely burdened by cultural, legal, and other social influences that curtail the benefits of marriage, more children are born and/or raised outside of marriage. The children of non-marital relationships and the children of unstable and failed marriages experience more difficult, disadvantaged lives and life outcomes.<sup>10</sup> Children deprived of the benefits of healthy, stable marriages disproportionately fall into the underclass—educationally, economically, legally, and socially.<sup>11</sup> Children thrive best when raised by their married mother and father.<sup>12</sup>

Marriage rates are dropping in many nations, especially in affluent western nations.<sup>13</sup> There is good reason to worry that the welfare of children in those countries will be diminished and their futures and opportunities will

9. *See infra, passim.*

10. *See, e.g.,* David Popenoe, *Married and Unmarried Parents, A Research Summary*, <http://parenthood.library.wisc.edu/Popenoe/Popenoe-Married.html> (last visited Sept. 28, 2017): The children of unmarried parents (1) have fewer economic resources, (2) receive less parenting from their fathers, and (3) face a much greater risk of parental break-up, leading to two to three times the risk of having serious social problems when they become adolescents and young adults, such as juvenile delinquency and teenage out-of-wedlock childbearing; Stephanie Peatling, *Children of Single Parents Disadvantaged for Longer*, THE SYDNEY MORNING HERALD, (July 11, 2013.), <http://www.smh.com.au/federal-politics/political-news/children-of-single-parents-disadvantaged-for-longer-20130710-2pqg0.html>; Martin Beckford, *Children in Single-Parent Families More Likely to Suffer Emotional Problems, Report Finds*, THE TELEGRAPH (Oct. 21, 2008), <http://www.telegraph.co.uk/news/politics/3235650/Children-in-single-parent-families-more-likely-to-suffer-emotional-problems-report-finds> (“Children from broken homes are almost five times more likely to development emotional problems than those living with both parents, a report has found.”).

11. *See* Susan Brown, *Marriage and Child Well-Being: Research and Policy Perspectives*, *Journal of Marriage and the Family*, 1059, 1077 (2010).

12. *See infra, passim.*

13. Maria Gallucci, *Growing Decline in Marriages Rates Leading to Spiritual—And Economic—Devastation?*, INT’L BUS.TIMES (Dec. 15, 2014) <http://www.ibtimes.com/growing-decline-marriage-rates-leading-spiritual-economic-devastation-1754025> (“We’re a less marriage[-]centric society than we used to be,” said Isabell V. Sawhill, an economist and co-director of the Center on Children and Families at the Brookings Institution in Washington. . . . Across Europe, the rate of knot-tying is about 40 percent lower than it was in 1970. . . . Australia, Japan, South Korea, Brazil, Mexico and other industrialized economies have similarly seen their marriage rates decline. . . . [E]conomic uncertainty is pushing down birth rates in the developed world.” As one Spanish Research Professor stated: “I don’t think the trend will reverse; it’s a general trend across all of the world,” she said. ‘We won’t return to the numbers of the past.’”).

be significantly impaired compared to children in those nations in prior generations, and, ironically, compared to children in less prosperous countries in the world where marriages are stable. The United States is among those affluent nations where marriage is shrinking and marriages are deteriorating.<sup>14</sup>

Not all adults are able or willing to make or sustain the real, full marital commitment necessary to make a healthy, lasting marriage. It takes two spouses to make a marriage work, but it only takes one spouse to abandon, end, or destroy a marriage. So, our laws and societies must be prepared to help, assist and protect the interests of vulnerable adults and children in non-marital relationships, unstable marriages, dissolved marriages, and so-called “common law divorces,” (i.e., abandonment).

Thus, if a society truly is committed to promoting the well-being of children and to their most advantageous growth and development it will be (at least) equally committed to protecting, encouraging and promoting healthy marriages. A marriage-promoting society also will strive to preserve, strengthen, increase, and improve the practice and quality of marriages. A legal system can do so by facilitating and supporting informed, reasonable and responsible entry into marriage. That means that society will provide reasonable preparation for marriage such as basic marriage education and training programs.<sup>15</sup> It also means that such states will foster other organizations (including private, charitable, religious and other non-governmental organizations) that help to foster marriage and that teach responsible marriage practices, and that try to help couples to achieve successful, healthy, happy married life.<sup>16</sup>

While the benefits of marriage for adults are obvious and many, the benefits of marriage for children and for society may be even more

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14. *Id.* (“The U.S. marriage rate . . . has dropped to its lowest level in nearly a century . . . according to a Pew Research Center analysis.”)

15. See, e.g., *Why Complete Our Premarital Course?*, FLA. MARRIAGE PREP, <http://www.floridamarriageprep.com/faqs/is-premarital-education-for-you/> (Couples who complete a marriage preparation course in Florida received a discount on their marriage license fee, and the three-day waiting period is waived. There are numerous marriage preparation courses available in the UK, also).

16. Joe Hadfield, *Do Marriage Prep Classes Really Work?*, BYU NEWS (July 15, 2010), <https://news.byu.edu/news/do-marriage-prep-classes-really-work> (“After participating in marriage education programs, couples were significantly better at communicating. The study did not find a link between the classes and relationship quality.”); see also *Marriage Preparation*, UNITED STATES CONFERENCE OF CATHOLIC BISHOPS, <http://www.usccb.org/issues-and-action/marriage-and-family/marriage/marriage-preparation/>; *Your Marriage Preparation*, THE CHURCH OF ENG., <https://www.churchofengland.org/weddings-baptisms-funerals/weddings/your-marriage-preparation.aspx>; *Marriage Preparation Course Participants Graduated Today*, Trinity Methodist Church, <http://www.trinitypj.com/marriage-preparation-course-participants-graduated-today/>.

profound.<sup>17</sup> Indeed, it could be argued marriage is a social institution created first, and foremost, for the benefit of children, their parents, and the future generations of society.<sup>18</sup>

This article reviews evidence of changing (mostly deteriorating) marital families in the United States in Part II. Next, in Part III, the contemporary “marriage crisis” is examined, and why it matters. Part IV discusses the risks that non-marital cohabitation poses to the institution of marriage. Children’s need and hunger to live in marital families with their mothers and fathers are reviewed in Part V. The conclusion, in Part VI, emphasizes the urgent need to revitalize marriage in the United States for the sake of children and future generations.

## II. CHANGING FAMILIES AND FAMILY STRUCTURES

The world is changing in many ways, with the most profound changes occurring in families.<sup>19</sup> Some of those family changes involve or portend very deep and powerful changes in the basic environment in which children live and are raised. Changes in family composition and family structure can produce consequences for individuals and families that last for generations. That is because the family is the primary environment in which children grow up, are socialized, acquire their core beliefs, values, and living patterns.<sup>20</sup>

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17. *How Does Society Benefit from Strong Marriages?*, U.S. CONF. OF CATH. BISHOPS’S NAT’L PASTORAL INITIATIVE FOR MARRIAGE, <http://www.usccb.org/issues-and-action/marriage-and-family/marriage/upload/USCCB-FLWY-How-Does-Society-Benefit-From-Strong-Marriages.pdf> (last visited Sept. 29, 2017) (The U.S. Conference of Catholic Bishops has put it this way: “‘The family exists at the heart of all societies.’ It is the first and most basic community where children learn about Christ and experience the joy of communal existence . . . .”); *see also A Child’s Early Home Environment has Long-term Effects on Development*, THE URBAN INST., [http://www.urbanchildinstitute.org/sites/all/files/databooks/TUCI\\_Data\\_Book\\_VII\\_2012.05\\_family.pdf](http://www.urbanchildinstitute.org/sites/all/files/databooks/TUCI_Data_Book_VII_2012.05_family.pdf) (last visited Sept. 29, 2017) (“Beginning in infancy, a problematic home environment can disrupt the brain’s stress response system, reduce the quality of caregiving a child receives, and interfere with healthy development. Research has linked negative home environments during children’s first three years with a host of developmental problems, including -poorer language development by age three. -later behavior problems. -deficits in school readiness. -aggression, anxiety and depression. -impaired cognitive development at age three. Longer-term effects have also been documented: A child’s early home environment and the skills he learns in the first three years have been linked to -high school graduation. -teen parenthood. -adult employment and earnings.”).
18. Mental Health America, *The Family Environment*, [http://www.mhankyswoh.org/Uploads/files/pdfs/Family-FamilyEnvironment\\_20130812.pdf](http://www.mhankyswoh.org/Uploads/files/pdfs/Family-FamilyEnvironment_20130812.pdf) (last visited Sept. 28, 2017) (“Because children’s lives are centered initially within their families, the family environment becomes the primary agent of socialization.”).
19. *See infra, passim*.
20. Mental Health America, *supra* note 18; *see also* Dena Aufseeser, Susan Jekielek, & Brett Brown, *The Family Environment and Adolescent Well-being: Exposure to Positive and Negative Family*

Changes occurring in the United States may be indicative of what is happening to families in many nations. The U.S. Census Bureau reported in 2010 that about half of all men (50 percent) and women (54 percent) in America aged 15 and over have married only once,<sup>21</sup> but that represents a drop in the once-married population of four percent (men) to six percent (women) in less than 15 years.<sup>22</sup> Marriage stability generally is highest among well-educated Americans.<sup>23</sup> While nearly 60 percent of recent marriages are first marriages for both spouses, 21 percent of marriages involve both spouses who have been married at least once previously.<sup>24</sup> Between 2008–2012, two-thirds of all men age 15 or older (66.4%) and nearly three-fourths of all women of similar age (72.1%) were or had been married.<sup>25</sup> The rate of multiple marriages increases with the age of the parties until age 65, when it subsides.<sup>26</sup> Foreign-born Americans are the more likely to have married only once than the native born.<sup>27</sup>

Americans who have graduated from college (bachelor's degree) have lower risk of divorce than those with less education.<sup>28</sup> The unemployed and those with low incomes have the highest percentage of never-married status, though some of that reflects their relatively young age.<sup>29</sup> The rising age of marriage may account for some of the recent drop in the percentage of men and women who have ever married.<sup>30</sup> The median age of first marriage for men fell consistently from 1890 (26.1 years) to 1960 (22.8 years), but it has risen pretty steadily since then and was 28.2 years in 2010.<sup>31</sup> Likewise, the median age of first marriage for women fell regularly from 1890 (22.0 years)

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*Influences*, NAT'L ADOLESCENT HEALTH INFO. CTR. (June 2006), <http://nahic.ucsf.edu/wp-content/uploads/2011/02/2006-FamEnvironBrief.pdf> ("By action and by example, parents shape the lives of their children from birth through adulthood. In adolescence, the influence of friends and peers take on greater importance, but research clearly demonstrates the continued significance of parents in shaping the behaviors and choices of teens as they face the challenges of growing up.").

21. Jamie M. Lewis & Rose M. Kreider, *Remarriage in the United States*, AM. COMMUNITY SURV. REP., at 2 (March 2015), <https://www.census.gov/content/dam/Census/library/publications/2015/acs/acs-30.pdf>, [hereinafter Lewis, Krieder, *Remarriage*].
22. *Id.*
23. *Id.* ("Those with at least a bachelor's degree are more likely to have married only once (64 percent) than all adults (52 percent).").
24. *Id.*
25. *Id.* at 3, Table 1.
26. *Id.*
27. *Id.* at 7, Table 2.
28. *Id.*
29. *Id.*
30. See generally Mark Mather and Diana Lavery, *In U.S., Proportion Married at Lowest Recorded Levels*, Population Reference Bureau, (Sept. 2010), <http://www.prb.org/Publications/Articles/2010/usmarriagedecline.aspx>.
31. Median Age at First Marriage, 1890-2010, Infoplease, <http://www.infoplease.com/ipaipa/ipa/A0005061.html> (last visited Apr. 5, 2016).

to 1960 (20.3 years), but it has risen pretty steadily since then and was 26.1 years in 2010.<sup>32</sup> Out-of-wedlock births have steadily risen in America.<sup>33</sup> In 2012, nearly 41% (40.7%) of all children born in the United States of America were born out of wedlock.<sup>34</sup> In the United Kingdom, 47.5% of all births in 2012 (346,595 babies) were out of wedlock, and it was predicted that “[m]ost children will be born out of wedlock by 2016.”<sup>35</sup> For the first time since the U.K. Census was founded in 1801, married couples in 2012 were a minority.<sup>36</sup>

The rate of marriages (per 1,000 population) in the United States rose steadily from 1900 until 1930, fell during the Great Depression, rose again during the 1940s and 1950s, fell for a decade, then stabilized between 10.0 and 10.6 for sixteen years, before beginning a mostly downward trajectory in 1986 that has continued for three decades until the present (last reported in 2012, at 6.8 percent).<sup>37</sup> While it seems to be popular to assert that marriage has become obsolete, still, “over 90 percent of American women will marry by age 45.”<sup>38</sup> The traditional order of marriage first, then sexual relations, then children has been shuffled, with sexual relations (and often children) now commonly preceding marriage.

Increased cohabitation may explain some of the recent decline in marriage rates. The rate of divorce was less than one divorce per 1,000 population in 1900 and 1910, and rose pretty steadily until the early 1980s

32. *Id.*

33. *Id.*; see also George A. Akerlof & Janet L. Yellen, *An Analysis of Out-Of-Wedlock Births in the United States*, THE BROOKINGS INST. (Aug. 1, 1996), <https://www.brookings.edu/research/analysis-of-out-of-wedlock-births-in-the-united-states/> (“Since 1970, out-of-wedlock birth rates have soared.”); Gardner Harris, *Out-Of-Wedlock Birthrates Are Soaring*, *U.S. Reports*, N.Y. TIMES (May 13, 2009), <http://www.nytimes.com/2009/05/13/health/13mothers.html> (The share of children born out of wedlock “is increasing rapidly both here and abroad . . .”); Jordan Weissman, *For Millennials, Out-of-Wedlock Childbirth Is the Norm*, SLATE (June 23, 2014), [http://www.slate.com/articles/business/moneybox/2014/06/for\\_millennials\\_out\\_of\\_wedlock\\_child\\_birth\\_is\\_the\\_norm\\_now\\_what.html](http://www.slate.com/articles/business/moneybox/2014/06/for_millennials_out_of_wedlock_child_birth_is_the_norm_now_what.html) (“In a study tracking the first wave of millennials to become parents, a team from Johns Hopkins University recently found that 64 percent of mothers gave birth at least once out of wedlock. Almost one-half had all of their children without ever exchanging vows.”).

34. See Roger Clegg, *Latest Statistics on Out-of-Wedlock Births*, NAT’L REV. (Oct. 11, 2013, 9:53 AM), <http://www.nationalreview.com/corner/360990/latest-statistics-out-wedlock-births-roger-clegg>.

35. Steven Swinford, *Most children will be born out of wedlock by 2016*, THE TELEGRAPH (July 10, 2013, 10:00 PM), <http://www.telegraph.co.uk/news/politics/10172627/Most-children-will-be-born-out-of-wedlock-by-2016.html>.

36. *Id.*

37. *Marriage and Divorces, 1900-2012*, INFOPLEASE, <http://www.infoplease.com/ipa/A0005044.html> (last visited Apr. 5, 2016).

38. Diana B. Elliott et al., *Historical Marriage Trends from 1890-2010: A Focus on Race Differences*, U.S. CENSUS BUREAU, at 2, <https://www.census.gov/content/dam/Census/library/working-papers/2012/demo/SEHSD-WP2012-12.pdf> (last visited Mar. 31, 2016).

peaking at 5.3 in 1981; but since then the divorce rate has dropped steadily and most recently the divorce rate in America was reported to be 3.4 divorces per 1,000 population (in 2012).<sup>39</sup> Non-marital cohabitation has replaced marriage for many young couples.

Interestingly, while marriage rates have been declining, people's aspirations to marry have not fallen as fast. Even as 39 percent of Americans in 2010 told researchers at Pew that "marriage is an institution that is becoming obsolete," 61 percent of unmarried people said they hoped to get married someday. And even among unmarried adults who said they thought marriage was obsolete, nearly half still planned on marriage for themselves. As the sociologist Andrew Cherlin described this aspirational view, marriage is now the "capstone," not the cornerstone, of people's lives. "Marriage has become a status symbol—a highly regarded marker of a successful personal life," Cherlin wrote in the *New York Times*. It's no wonder, then, that college graduates are the only ones who feel successful enough to marry, and who are also more likely to find partners of equal status with whom to tie the knot.<sup>40</sup>

Thus, while the percentage of white American women college graduates who marry has remained steady for the past three decades, the marriage percentage has fallen steadily for women with only high school (or less) education, and women with less than four years of college.<sup>41</sup> "As the returns to education rise, children handicapped by access to just one parent's time, attention, and income are at a serious disadvantage. By getting married and staying married, educated parents are compounding the ever-widening gaps in both achievement and opportunity between the haves and have-nots."<sup>42</sup>

Other changes are influencing marriage and family life also. For example, today only four American states have majority-minority populations (more than half of the population of the state is non-White "minorities"). By 2040, there will be fifteen majority-minority states, and by 2060, it is estimated 22 of the 50 states will be majority-minority.<sup>43</sup> In 1980, 80% of the U.S. population was white; today it is only 63%, and by 2060 it

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39. *Id.*

40. Anne Kim, *Why is Marriage Thriving Among (and Only Among) the Affluent?*, WASH. MONTHLY (Mar./Apr./May 2016), <https://washingtonmonthly.com/magazine/maraprmay-2016/why-is-marriage-thriving-among-and-only-among-the-affluent/>.

41. *Id.* at Fig. 2.

42. *Id.*

43. Karlyn Bowman, *States of Change: The Demographic Evolution of the American Electorate, 1974-2060*, AEI (Feb. 23, 2015), <http://www.aei.org/publication/states-change-demographic-evolution-american-electorate-1974-2060/>.

is projected to be less than 44%. “Hispanics were 6 percent in 1980, are 17 percent today, and should be 29 percent by 2060. Asians/Others were just 2 percent in 1980, are 8 percent today, and should be 15 percent by 2060. Blacks, however, should be stable at 12 percent to 13 percent . . .”<sup>44</sup> An additional ten American states in 2060 are expected to be more than 40% minority.<sup>45</sup> The Table below shows the dramatic rise in the percentage of never-married American men and women for four decades.<sup>46</sup>

**Table 1.**  
**Marital History by Sex for Selected Birth Cohorts, 1935-39 to 1980-84: 2004**

Source: U.S. Census Bureau

Internet release date: month x, 2007

(Numbers in thousands, for meaning of symbols, see text.)

Characteristic	1935 to 1939	1940 to 1944	1945 to 1949	1950 to 1954 <sup>1</sup>	1955 to 1959 <sup>1</sup>	1960 to 1964 <sup>1</sup>	1965 to 1969 <sup>1</sup>	1970 to 1974 <sup>1</sup>	1975 to 1979 <sup>1</sup>	1980 to 1984 <sup>1</sup>
<b>..Men (in1000's)</b>	<b>4,628</b>	<b>6,139</b>	<b>8,138</b>	<b>9,489</b>	<b>10,868</b>	<b>11,005</b>	<b>10,140</b>	<b>9,757</b>	<b>9,555</b>	<b>9,955</b>
..Percent ever married by age:										
...20 years	20.8	22.3	21.2	22.6	19.0	14.5	12.0	11.3	8.1	6.8
...25 years	65.9	65.3	64.8	56.2	51.0	43.6	41.0	39.3	37.3	(X)
...30 years	83.8	81.6	78.3	73.3	68.4	64.9	63.7	64.3	(X)	(X)
...35 years	89.4	87.2	84.6	81.1	78.4	76.6	77.0	(X)	(X)	(X)
...40 years	91.2	89.8	88.5	85.6	83.6	83.0	(X)	(X)	(X)	(X)
...45 years	92.5	91.5	90.5	87.7	85.9	(X)	(X)	(X)	(X)	(X)
...50 years	93.5	92.3	91.9	89.4	(X)	(X)	(X)	(X)	(X)	(X)
..Percent ever divorced by age:										
...20 years	1.0	0.8	1.0	1.3	1.2	0.8	0.9	0.7	0.5	0.2
...25 years	3.4	4.3	7.2	7.9	7.2	6.0	6.1	4.7	3.5	(X)
...30 years	7.3	11.6	16.2	16.0	15.0	13.3	12.9	10.7	(X)	(X)
...35 years	13.7	18.0	24.3	23.1	21.4	19.8	18.3	(X)	(X)	(X)
...40 years	20.5	24.8	29.2	28.1	27.3	25.4	(X)	(X)	(X)	(X)
...45 years	25.5	29.5	34.3	32.0	31.7	(X)	(X)	(X)	(X)	(X)
...50 years	28.6	32.2	37.2	35.3	(X)	(X)	(X)	(X)	(X)	(X)
...55 years	30.0	35.1	38.7	(X)						

44. *Id.*

45. *New AEI, Brookings, & CAP Report Maps the Demographic Evolution of the American Electorate from 1974 to 2060*, AEI (Feb. 24, 2015), <http://www.aei.org/press/press-release-new-aei-brookings-cap-report-maps-demographic-evolution-american-electorate-1974-2060/>.

46. Marital History by Sex for Selected Birth Cohorts, Census Bureau 2004, [www.census.gov/marrige/data/sipp/2004/Table1.2004.xls](http://www.census.gov/marrige/data/sipp/2004/Table1.2004.xls) (last visited May 6, 2016); see also Rose M. Kreider & Renee Ellis, *Number, Timing, and Duration of Marriages and Divorces: 2009*, at Table 3 (May 2011), <https://www.census.gov/prod/2011pubs/p70-125.pdf>.

## ..Percent married two times or more by age:

...25 years	1.8	1.9	2.8	2.7	2.2	1.8	1.7	1.6	1.1	(X)
...30 years	4.2	5.6	8.1	8.6	6.7	6.3	5.6	5.5	(X)	(X)
...35 years	8.3	11.5	14.9	13.7	12.1	11.2	10.0	(X)	(X)	(X)
...40 years	13.2	16.3	21.3	19.2	16.4	15.3	(X)	(X)	(X)	(X)
...45 years	17.9	21.3	25.3	22.1	19.9	(X)	(X)	(X)	(X)	(X)
...50 years	22.5	24.4	27.7	24.7	(X)	(X)	(X)	(X)	(X)	(X)
...55 years	24.9	26.8	30.3	(X)	(X)	(X)	(X)	(X)	(X)	(X)

**..Women (in 1000's) 5,339 6,736 8,706 10,070 11,256 11,510 10,313 10,010 9,559 10,008**

## ..Percent ever married by age:

...20 years	51.5	47.4	44.9	41.2	36.5	28.5	23.9	21.0	18.0	14.3
...25 years	83.2	79.1	76.3	70.6	65.4	57.2	55.4	51.7	50.2	(X)
...30 years	90.0	87.5	84.7	80.5	77.3	83.4	74.3	72.9	(X)	(X)
...35 years	92.0	90.6	88.4	84.8	83.5	82.2	82.1	(X)	(X)	(X)
...40 years	93.4	92.4	90.2	88.1	86.8	85.7	(X)	(X)	(X)	(X)
...45 years	94.0	93.4	91.3	89.5	88.6	(X)	(X)	(X)	(X)	(X)
...50 years	94.6	94.0	92.1	90.8	(X)	(X)	(X)	(X)	(X)	(X)

## ..Percent ever divorced by age:

...20 years	2.4	2.0	2.4	2.7	2.4	2.4	1.9	2.0	1.4	1.1
...25 years	6.6	6.9	11.0	12.3	11.6	11.2	10.0	8.3	5.4	(X)
...30 years	11.5	14.0	20.8	21.6	20.4	19.9	17.4	14.1	(X)	(X)
...35 years	17.3	20.6	28.6	28.1	26.4	25.8	23.6	(X)	(X)	(X)
...40 years	22.8	25.1	34.4	33.8	31.4	30.3	(X)	(X)	(X)	(X)
...45 years	26.3	29.1	37.8	37.0	35.0	(X)	(X)	(X)	(X)	(X)
...50 years	28.6	31.3	40.1	39.7	(X)	(X)	(X)	(X)	(X)	(X)
...55 years	30.3	33.4	41.7	(X)	(X)	(X)	(X)	(X)	(X)	(X)

## ..Percent married two times or more by age:

...25 years	3.6	4.3	4.8	4.9	4.4	3.8	3.5	3.4	1.9	(X)
...30 years	6.9	8.5	11.3	11.3	10.9	9.7	9.0	7.8	(X)	(X)
...35 years	10.7	12.5	17.9	16.6	17.1	15.2	14.2	(X)	(X)	(X)
...40 years	14.3	16.5	22.6	22.0	20.9	19.1	(X)	(X)	(X)	(X)
...45 years	18.1	19.9	26.4	25.6	23.9	(X)	(X)	(X)	(X)	(X)
...50 years	21.3	22.1	28.7	27.8	(X)	(X)	(X)	(X)	(X)	(X)
...55 years	22.5	24.0	31.0	(X)	(X)	(X)	(X)	(X)	(X)	(X)

The percentage of never-married men has risen during the last forty years by over 700%, and the percentage of never-married women has increased by nearly 600% in that same period.<sup>47</sup>

According to the Pew Research Center (PRC), the percentages of Americans ages eighteen to thirty-two years old who were married has steadily fallen from 1960, when 65% of the Silent Generation were married, to 2013, when only 26% of Millennials of the same age were married. As of

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47. *Id.*

2015, fewer than half as many (only about 40% as many) young Americans ages eighteen to thirty-two were married than young Americans of the same age in 1960—less than three generations (or age cohorts) earlier.<sup>48</sup> Marriage has become devalued in contemporary affluent societies. For example, fewer than half of Americans surveyed by the Pew Research Center in 2014 agreed that society is better off if marriages and children are given priority, while 50% of those surveyed responded that society is “just as well off if people have other priorities.”<sup>49</sup>

Of course, no discussion of changes in marriage in the USA would be complete without mention of the legalization of same-sex marriage. On June 26, 2015, by a vote of 5 to 4, the U.S. Supreme Court ruled in *Obergefell v. Hodges*<sup>50</sup> that all states must legalize same-sex marriage. That ruling settled the legal question about whether same-sex couples could marry (absent a constitutional amendment or later Court ruling reversing *Obergefell*), but did not resolve the broader questions of social acceptance and legitimacy of same-sex marriage.

Prior to the *Obergefell* ruling, voters in nearly two thirds (31) of the states had approved amendments to state constitutions explicitly prohibiting same-sex marriage.<sup>51</sup> That evidences very strong popular rejection of same-sex marriage. Of course, in 2015, all of those constitutional amendments were effectively nullified by one vote in the 5-4 Supreme Court decision in *Obergefell*.

The legalization of same-sex marriage by the Court in *Obergefell* has put America on the ideological extreme in the international community of nations. Currently only 24 nations (12.4 percent of the 193 sovereign nations in the world) allow same-sex marriage.<sup>52</sup> In contrast, nearly twice as many

48. Pew Research Ctr., Soc., *Social & Demographic Trends, Millennials in Adulthood*, PEW RES. CTR. (Mar. 7, 2014), <http://www.pewsocialtrends.org/2014/03/07/millennials-in-adulthood/>.

49. Wendy Wang & Kim Parker, *Record Share of Americans Have Never Married*, PEW RES. CTR. (Sept. 24, 2014), <http://www.pewsocialtrends.org/2014/09/24/record-share-of-americans-have-never-married/st-2014-09-24-never-married-02/> [hereinafter PRC Trends].

50. *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015).

51. The states were: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Florida, Georgia, Hawaii, Idaho, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Montana, Nebraska, Nevada, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, and Wisconsin. State constitutions can be viewed at Cornell University School of Law, *Legal Information Institute*, CORNELL U., <https://www.law.cornell.edu/statutes.html>.

52. Here, in chronological order of the date the law took effect, is a list of the countries that legally recognize same-sex marriage as of this writing: Netherlands (2001), Belgium (2003), Canada (2005), Spain (2005), South Africa (2006), Norway (2009), Sweden (2009), Portugal (2010), Iceland (2010), Argentina (2010), Denmark (2012), Uruguay (2013), New Zealand (2013), France (2013), Brazil (2013), United Kingdom (England and Wales, but not Northern Ireland) (2014);, Scotland (2014), Luxembourg (2015);, Greenland (2015); Ireland (2015);,); the United States of

nations—at least forty-seven nations—have adopted constitutional language that bars same-sex marriage.<sup>53</sup> Pressure from many international bodies and influential nations to legalize same-sex marriage persists, so the trend toward same-sex marriage probably will continue.

The impact upon children of being raised by same-sex parents remains largely unexplored. A recent annual report by the Federal Interagency Forum on Child and Family Statistics (Forum), a collection of twenty-two Federal government agencies involved in research and activities related to children and families, provides a basis for concern. The percentage of children ages 0-17 being raised by two married parents has dropped from nearly 80% in 1980 to just over 60% in 2016.<sup>54</sup> In 2016, 23% of children lived with only their mothers, 4% lived with only their fathers, and 4% lived with neither of their parents.<sup>55</sup> The majority of children who live with neither of their parents are living with grandparents or other relatives.<sup>56</sup> “In 2016, 69% of children ages 0–17 lived with two parents (65% with two married parents and 4% with two biological or adoptive cohabiting parents).”<sup>57</sup> “Out of all [American]

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America (2015), Mexico (2016), Colombia (2016), Finland (2017), Malta (2017), and soon Germany (2017, in process). See Iman Smith, *Same-sex Marriage Just Became Legal in Finland*, PBS NEWSHOUR (Mar. 2, 2017, 1:50 PM), <http://www.pbs.org/newshour/rundown/same-sex-marriage-just-became-legal-finland/>; Alison Smale & David Shimer, *German Parliament Approves Same-Sex Marriage*, N.Y. TIMES (June 30, 2017), <https://www.nytimes.com/2017/06/30/world/europe/germany-gay-marriage.html>. (The total population of nations that allowed same-sex marriage in mid-2015 was less than 900 million, which amounted to just 11.9% of the population of the world.); see also *Gay Marriage Around the World*, PEW RES. CTR. (June 26, 2015), <http://www.pewforum.org/2015/06/26/gay-marriage-around-the-world-2013>. (Bills to allow same-sex marriage to have been passed in Slovenia and Finland; the Finnish bill is slated to become law in 2017, but a voter referendum in Dec. 2015 overturned the Slovenian legislation. Israel recognizes same-sex marriages legally performed in other jurisdictions, but does not allow same-sex marriages to be celebrated in Israel.)

53. Constitutions of Armenia (art. 32), Azerbaijan (art. 34), Belarus (art. 32), Bolivia (art. 63), Brazil (art. 226), Bulgaria (art. 46), Burkina Faso (art. 23), Burundi (art. 29), Cambodia (art. 45), China (art. 49), Columbia (art. 42), Croatia (art. 61, Dec. 2013), Cuba (art. 43), Democratic Republic of Congo (art. 40), Ecuador (art. 38), Eritrea (art. 22), Ethiopia (art. 34), Gambia (art. 27), Honduras (art. 112), Hungary (art. M), Japan (art. 24), Latvia (art. 110), Lithuania (art. 31), Malawi (art. 22), Moldova (art. 48), Mongolia (art. 16), Montenegro (art. 71), Namibia (art. 14), Nicaragua (art. 72), Panama (art. 58), Paraguay (arts. 49, 51, 52), Peru (art. 5), Poland (art. 18), Romania (art. 44), Rwanda (art. 26), Serbia (art. 62), Seychelles (art. 32), Somalia (art. 2.7); Sudan (art. 15), Suriname (art. 35), Swaziland (art. 27), Tajikistan (art. 33), Turkmenistan (art. 25), Uganda (art. 31), Ukraine (art. 51), Venezuela (art. 77), Vietnam (art. 64). Cf. Lynn D. Wardle, *Marriage, “Magic Bullets” and Medical Decision-Making: Contemporary Reflections on Themes in the Scholarship of Professor Marygold S. Melli*, 29 WISC. J.L., GENDER & SOC. 87, 123, appendix section D (2014) (listing 46 nations then).
54. *America’s Children: Key National Indicators of Well-Being, 2017, 2015*, THE FED. INTERAGENCY F. ON CHILD AND FAM. STAT. [hereinafter Forum], <https://www.childstats.gov/americaschildren/family1.asp> (last visited Sept. 23, 2017) [hereinafter “*America’s Children*”].
55. *Id.*
56. *Id.*
57. *Id.*

children ages 0–17, 5.7 million (8%) lived with a parent or parents who were cohabiting.”<sup>58</sup> Older children were less likely to live with two parents than were younger children.<sup>59</sup>

Despite recent declines in birth rates generally, the overall increases in births to unmarried women over the last several decades have affected family structure and the economic security of children. Children of unmarried mothers are at higher risk of adverse birth outcomes, such as low birthweight and infant mortality, than are children of married mothers. They are also more likely to live in poverty than are children of married mothers.<sup>60</sup>

Another report emphasized: “Children in single-parent families comprise 27% of all American children, yet they account for 62% of all poor children.”<sup>61</sup> Similarly, “[b]etween 1980 and 2008, the birth rate for unmarried women ages 15–44 increased 22 points, from 29 to 52 births for every 1,000 unmarried women, and then decreased 8 points, to 43 per 1,000 in 2015.”<sup>62</sup>

“Unmarried birth rates for all age groups generally increased between 1980 and the mid-1990s, but have shown varying patterns for different groups since then.”<sup>63</sup> The percentage of children born to unmarried women increased between 1980 and 2015 in all age cohorts except 15–17 and 18–19 year old age groups.<sup>64</sup> Births out of marriage more than tripled for women in their twenties, “increas[ing] from 19 percent in 1980 to 66 percent in 2015 among women ages 20–24 and from 9 percent in 1980 to 38 percent in 2015 among women ages 25–29.”<sup>65</sup> The proportion of births to unmarried women in their thirties more than doubled.<sup>66</sup> In fact, “[t]he percentage of all births to unmarried women was 18 percent in 1980 and 40 percent in 2015.”<sup>67</sup>

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58. *Id.*

59. *Id.*

60. *Id.* (follow the “Family and Social Environment” link in the sidebar and select “Births to Unmarried Women” to <https://www.childstats.gov/americaschildren/family2.asp> (last visited Sept. 23, 2017)).

61. *Why Children Need Married Parents*, U.S. CONF. OF CATH. BISHOPS, <http://www.usccb.org/issues-and-action/marriage-and-family/children/children.cfm> (last visited Mar. 1, 2016) [hereinafter *Why Children Need*]; see also Patrick Fagan et al., *The Positive Effects of Marriage: A Book of Charts*, THE HERITAGE FOUND., [http://www.heritage.org/sites/default/files/2017-09/positive\\_effects\\_of\\_marriage.pdf](http://www.heritage.org/sites/default/files/2017-09/positive_effects_of_marriage.pdf).

62. *America's Children*, *supra* note 54.

63. *Id.*

64. *Id.*

65. *Id.*

66. *Id.*

67. *Id.*

Overall, the percentage of births out of wedlock more than doubled during that thirty-three-year period—essentially in a single generation. Of course, “[c]hildren are at greater risk for adverse consequences when born to a single mother because the social, emotional, and financial resources available to the family may be limited.”<sup>68</sup>

Children of all ages are at greater risk of harm and have lower prospects of educational achievement when they are not raised by married parents. For example, three economists (Professors Allen, Pakaluk and Price) found significant difference in educational progress of children raised by parents in same-sex relationships and children raised by married moms and dads.<sup>69</sup> Their article, published online in *Demography* in 2012, examined a claim made two years earlier by Professor Michael J. Rosenfeld that school progress by children raised by same-sex couples was statistically indistinguishable from the progress made by children raised by heterosexual married couples.<sup>70</sup> Using the same data as Dr. Rosenfeld, but using alternative comparison groups or sample restrictions Professors Allen, Pakaluk, and Price found children raised by same-sex parents were 26% to 35% more likely to *not* make the same normal school progress as children raised by married heterosexual parents.<sup>71</sup> They concluded: “With respect to normal school progress, children residing in same-sex households can be distinguished statistically from those in traditional married homes and in heterosexual cohabiting households.”<sup>72</sup> Clearly, gender-integrative marriage benefits children’s educational attainment.

These and similar trends regarding the diminished value of marriage and shrinking benefits of marriage enjoyed by children are spreading in many other nations as well. “All around the world today, pre-existing family patterns are being upended . . . .”<sup>73</sup> “According to Eurostat, the European Union’s statistical agency, the probability of marriage before age 50 has been plummeting for European women and men, while the chance of divorce for those who do marry has been soaring.”<sup>74</sup> Nicholas Eberstadt noted:

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68. *Id.*

69. Douglas W. Allen, Catherine Pakaluk, & Joseph Price, *Nontraditional Families and Childhood Progress Through School: A Comment on Rosenfeld*, 50 *DEMOGRAPHY* 955, 960–61 (2012).

70. Michael J. Rosenfeld, *Nontraditional Families and Childhood Progress Through School*, 47 *DEMOGRAPHY* 755, 770 (2010) (In terms of normal progress through primary school, “children of same-sex couples cannot be distinguished with statistical certainty from children of heterosexual married couples.”); *see also id.* at 772 (“[C]hildren raised by same-sex couples have no fundamental deficits in making normal progress through school.”).

71. Allen, Pakaluk & Price, *supra* note 69, at 959–60.

72. *Id.* at 960.

73. Nicholas Eberstadt, *The Global Flight From the Family*, *WALL STREET J.*, Feb. 21, 2015, at A11.

74. *Id.*

The proportion of childless 40-something women is one in five for Sweden and Switzerland, and one in four for Italy. In Berlin and in the German city-state of Hamburg, it's nearly one in three, and rising swiftly. Europe's most rapidly growing family type is the one-person household: the home not only child-free, but partner- and relative-free as well. In Western Europe, nearly one home in three (32%) is already a one-person unit, while in autonomy-prizing Denmark the number exceeds 45%.<sup>75</sup>

Likewise, not long ago it was reported “[t]here are around 61,000 children in care in England alone . . . .”<sup>76</sup> “The number of UK children living in ‘severe poverty’ rose in the four years before the recession, research from a children’s charity suggests. Save the Children said the number of children in homes in this category rose 260,000 to 1.7m[illion] from 2004 to 2008.”<sup>77</sup> In 2010, it was noted: “Child poverty within working households is rising and now accounts for 58% of all UK cases, a report has found. A Joseph Rowntree Foundation report says there are 2.1 million impoverished youngsters in [UK] homes where parents are in work.”<sup>78</sup>

It also is reported that over half (52.4%) of all babies born in Wales are born outside of marriage, and nearly half of all Scottish babies (47.1%) are born out of wedlock.<sup>79</sup> That puts Welsh and Scottish children at significant disadvantage from the day of their birth.

The same trend of escape from marital family life is evident in Japan. “[A]bout one-sixth of Japanese women in their mid-40s are still single, and about 30% of all women that age are childless. Twenty years hence, it is projected 38% of all Japanese women in their mid-40s would be childless, and an even higher share—just over 50%—would never have grandchildren.”<sup>80</sup> Likewise, the flight from marriage is appearing in some Muslim nations.<sup>81</sup>

Some look to government to replace the family in many spheres. However, “as the past century of social policy has demonstrated, government

75. *Id.*

76. Jewell, *supra* note 3.

77. *Severe Child Poverty – UK*, IRP POVERTY DISPATCH (Jan. 29, 2010), <http://www.irp.wisc.edu/dispatch/severe-child-poverty-uk/>.

78. *Working Households and Child Poverty – UK*, IRP POVERTY DISPATCH (Dec. 9, 2010), <http://www.irp.wisc.edu/dispatch/working-households-and-child-poverty-uk/>.

79. *Marriage Best Environment to Raise Children, says Church*, CHRISTIAN TODAY (Jan. 8, 2007), <http://www.christiantoday.com/article/marriage.best.environment.to.raise.children.says.church/9006.htm>.

80. *Id.*

81. *Id.*

is a highly imperfect substitute for family—and a very expensive one.”<sup>82</sup> “[E]ven in Sweden, children from single-parent families are less likely to thrive than are children from two-parent families.”<sup>83</sup> Rates of suicide and drug addiction for children raised in one-parent families in Sweden are about two or three times higher than for children raised by both parents together.<sup>84</sup> Other risks are also increased.

A recent report from Child Trends found the odds that children in Sweden were held back in school were 78% higher for children from single-parent families, compared to their peers from two-parent families . . . . Another study of the entire population of Swedish children found Swedish children from single-parent families were about twice as likely to have psychological problems, attempt suicide, or struggle with substance abuse, compared to their peers from two-parent families, even after controlling for socioeconomic differences and parents’ history of psychological problems (see figure below). Finally, even in Sweden, marriage is the best ticket to the kind of stable, two-parent family that optimizes children’s odds of thriving. In fact, children born to married parents are 44% less likely to see their parents break up than are children born to cohabiting parents in this Scandinavian country.<sup>85</sup>

A chart provided by Dr. Wilcox graphically illustrates the risk of suicide for boys in single-parent families is 2.05 times higher than the risk to boys raised in two-parent families, while the risk of suicide for girls raised in single-parent homes is 1.78 times greater than the risk for girls raised in two-parent homes. Likewise, boys raised by a single parent have 3.01 times greater risk of drug addiction than boys raised by two parents, and girls raised by a single parent have 2.38 times greater risk of drug addiction than girls raised by two parents.<sup>86</sup> Similarly, the risk of repeating a grade in school in Sweden is 78% greater for children raised by a single parent than it is for children raised by a two parents.<sup>87</sup>

Clearly families, family structures, and family forms are changing in many nations. Equally clear, not all of those changes are improvements; not all of those changes benefit children. The family relationship form that provides the best opportunities and prospects for successful life for children—the ideal family form, the gold standard—is marriage.

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82. *Id.*

83. W. Bradford Wilcox, *The New Progressive Argument: For Kids, Marriage Per Se Doesn't Matter*, INST. FOR FAM. STUD. (Sept. 15, 2014), <http://family-studies.org/for-kids-marriage-per-se-doesnt-matter-right/>.

84. *Id.*

85. *Id.*

86. *Id.*

87. *Id.*

### III. THE “MARRIAGE CRISIS” IN AMERICAN LIFE AND FAMILY LAW—AND WHY IT MATTERS

Thus, there is a growing “marriage crisis” in America which is both the result of and the cause of family destabilization and disintegration in the United States. The “marriage crisis” is centered in the flight of American young adults from marriage, and from the commitments and responsibilities of marital families.

The American “marriage crisis” has been in the making for several decades. The most immediate legal *cause* of the marriage crisis was the adoption of unilateral “no-fault” divorce laws or practices in all states during a relatively short time (less than ten years) in the 1960s-1970s.<sup>88</sup> Those no-fault divorce laws sent a powerful and clear message about the commitment of marriage, changing marriage from a permanent or an almost-permanent relationship to a relationship that was disposable at the will or whim of either spouse. The message of unilateral no-fault divorce laws changed how Americans viewed marriage and the commitments of marriage.

The most troubling *effects* of the current “marriage crisis” are imposed upon children who are raised by just one parent, and grow up without the positive parental influence of their absent mother or father. Children raised by only one parent are deprived of something valuable, and they know it.

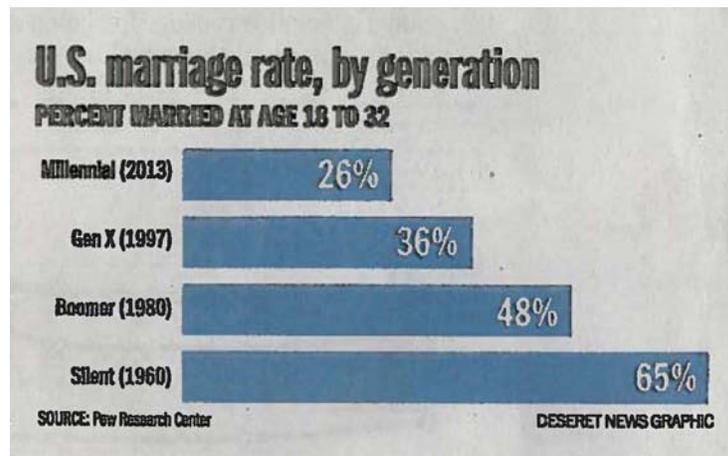
#### A. Statistical Pictures of the Marriage Crisis in the USA

The statistical picture of the disintegration of marriage in America is clear. For example, as the graph below indicates,<sup>89</sup> the marriage rates of Americans have dropped steadily for each succeeding generation since the generation born before and during the Great Depression. Nearly two-thirds of that “Silent” Generation were married by the time they were 32 years old (in 1960). By contrast, only 26% of the current “Millennial” young adult generation have been married by age 32 (in 2013). Thus, today 60% fewer young adult American “Millennials” are married by age 32 compared to their grandparents a half-century earlier.

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88. See Lynn D. Wardle, *No-Fault Divorce and the Divorce Conundrum*, 1991 BYU L. REV. 79.

89. Wang & Parker, *supra* note 49; see also Lois M. Collins, *U.S. Marriage Rate Hits New Low and May Continue to Decline*, DESERET NEWS, (May 20, 2015), <http://national.deseretnews.com/article/4535/US-marriage-rate-hits-new-low-and-may-continue-to-decline.html>.



Likewise, there has been a dramatic increase in cohabitation without marriage.<sup>90</sup> In 1960, just 1% of all couples living together were unmarried. Today, 10% of all couples are living together without marriage.

By 2010, over 7.5 million opposite-sex American couples were cohabiting without marriage, according to a 2010 Census report,<sup>91</sup> up from only 523,000 couples in 1970. That is a twelve-fold increase in just forty years.<sup>92</sup> The percentage of unmarried men and women has risen steadily for fifty years, and the median age at marriage has risen steadily for five decades.<sup>93</sup>

The U.S. National Center for Family and Marriage Research, in 2010, reported the percentage of women 19–44 years-old who have cohabited increased by over 75% between 1987 (33%) and 2006–08 with over half (58%) now reporting cohabitation.<sup>94</sup> Two-thirds of all women 19–44 years-

90. Rachael Rettner, *More Couples Living Together Outside of Marriage*, LIVE SCI. (Apr. 4, 2013), <http://www.livescience.com/28420-cohabiting-marriage-cdc-report.html>.

91. Rose M. Kreider, *Increase in Opposite-sex Cohabiting Couples from 2009 to 2010 in the Annual Social and Economic Supplement (ASEC) to the Current Population Survey (CPS)*, CENSUS (Sept. 15, 2010), <http://www.census.gov/population/www/socdemo/Inc-Opp-sex-2009-to-2010.pdf>.

92. *The Annual Marriage Rate has Declined Significantly in the Past Generation*, THE HERITAGE FOUND., <http://familyfacts.org/charts/105/the-annual-marriage-rate-has-declined-significantly-in-the-past-generation>. See generally Amber Lapp & David Lapp, *A Generation Conflicted About Marriage*, THE HERITAGE FOUND., <https://medium.com/2016-index-of-culture-and-opportunity/a-generation-conflicted-about-marriage-9a5fde4ce096> (last visited Oct. 21, 2017); see also *The Decline of Marriage and Rise of New Families*, PEW RES. CTR. (Nov. 18, 2010), <http://www.pewsocialtrends.org/files/2010/11/pew-social-trends-2010-families.pdf>.

93. UNMARRIED EQUALITY, <http://www.unmarried.org/statistics/> (last visited Oct. 21, 2019) (see Chart 1 and Chart 2).

94. *Trends in Cohabitation: Twenty Years of Change, 1987-2008*, NCFMR FAM. PROFILES, <https://www.bgsu.edu/content/dam/BGSU/college-of-arts-and-sciences/NCFMR/documents/FP/FP-10-07.pdf> (last visited Oct. 21, 2017).

old cohabit prior to their first marriage.<sup>95</sup> The Pew Research Center reported over one-third of Americans do not view cohabitation as a step toward marriage, including one-quarter of those who are cohabiting or have cohabitated.<sup>96</sup>

The social status, value, and desirability of marriage has fallen. For example, the annual marriage rate for women has fallen from 90.2 per 1000 women 15 and older in 1960 to just 37.4 in 2008.<sup>97</sup> Likewise, the proportion of adults (age 15 and older) who are married has fallen from about 70% for men and 65% for women in 1960 to 56% for men (a drop of 14% or one-fifth) and 53% for women (a drop of 12% or nearly one-fifth).<sup>98</sup> The percentage of ever-married adults at age 25 has dropped from 83.2% of men born in 1935 to 50.2% of those born in 1975, and from 65.9% of women born in 1935 to 37.3% of women born in 1975.<sup>99</sup>

The Pew Research Center found “Millennials” (those born 1981–92) rated being a good parent as being one of the most important things in their life, ten points higher (at 52%) than their Gen-X older siblings, but they rated having a successful marriage five percent points *lower* (only 30%) than the Gen-X cohort.<sup>100</sup> Less than one-third of Millennials (aged 18–30 in 2010) considered having a successful marriage as “one of the most important things in their life.”

The same study found 5% of millennials reported they do not want to marry and another 25% were not sure they wanted to marry.<sup>101</sup> Another Pew Research Center Report in November 2010 found 39% of Americans surveyed believe marriage is becoming obsolete.<sup>102</sup>

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95. *Id.*

96. *Cohabitation a Step Toward Marriage???*, PEW. RES. CTR. (Jan. 6, 2011), <http://pewresearch.org/databank/dailynumber/?NumberID=1165>.

97. *Id.*; see also *The Decline of Marriage*, *supra* note 92.

98. *The Proportion of Married Adults has Decreased*, THE HERITAGE FOUND., <http://familyfacts.org/charts/150/the-proportion-of-married-adults-has-decreased> (citing U.S. Census Bureau, Current Population Survey (2010)). For more recent date, see Lapp & Lapp, *supra* note 92.

99. *Both Men and Women Are Less Likely to Marry in Their Twenties*, THE HERITAGE FOUND., <http://familyfacts.org/charts/155/both-men-and-women-are-less-likely-to-marry-in-their-twenties> (citing U.S. Census Bureau, Survey of Income and Program Participation (SIPP) (2004)); see also Lapp & Lapp, *supra* note 92.

100. Wendy Wang & Paul Taylor, *For Millennials, Parenthood Trumps Marriage*, PEW RES. CTR. (Mar. 9, 2011), <http://pewresearch.org/pubs/1920/millennials-value-parenthood-over-marriage>.

101. *Id.*

102. See Hope Yen, *Four in 10 Say Marriage Is Becoming Obsolete*, ASSOCIATED PRESS (Nov. 18, 2010), <http://www.washingtonpost.com/wp-dyn/content/story/2010/11/18/ST2010111801921.html>; see also *Cohabitation a Step Toward Marriage?*, PEW. RES. CTR. (Jan. 6, 2011), <http://pewresearch.org/databank/dailynumber/?NumberID=1165>.

Thus, it should come as no surprise that the number and percentage of children born out of wedlock in the United States skyrocketed in recent decades, and is now at historically high levels. In the year 1940, fewer than 90,000 children born to unmarried women in the United States; in 2010 approximately 1.7 million children were born to unmarried women in the United States—a twenty-fold increase in about two generations.<sup>103</sup> In 1940, less than 4% of all births were to unmarried women; today, nearly 41% of all children born in the United States are born to unmarried women, more than a ten-fold increase.<sup>104</sup> Since 1960, there has been a six-fold increase in the percentage of children born to unmarried women.<sup>105</sup>

The birth rate for married women has dropped nearly 50% since 1960, and about 20% in the last twenty years alone,<sup>106</sup> while the birth rate for unmarried women has risen nearly 150% in the same time period. The gap between the birth rates per 1,000 women of married and unmarried women has closed from 135 to only 36 births per 1000.<sup>107</sup>

Divorce rates in the United States have peaked and recently cooled a little, but they remain at extremely high levels showing very dangerous signs of social class separation (much higher divorce rates for lower and middle classes than for the well-educated).<sup>108</sup> Cohort studies comparing percentage of American adults divorced by age fifty-five show increasing percentages with every passing cohort for every age-of-life period. The rate of divorce by age fifty-five has risen from 30% for both men and women born in 1935 to 42% for women born in 1945, and nearly 40% for men born in 1945.<sup>109</sup>

103. Jeffrey A. Parness & Zachary Townsend, *For Those Not John Edwards: More and Better Paternity Acknowledgments at Birth*, 40 U. BALT. L. REV. 53, 55 (2010) (citing CARMEN SOLOMON-FEARS, CONG. RESEARCH SERV., RL34756, NONMARITAL CHILDBEARING: TRENDS, REASONS, AND PUBLIC POLICY INTERVENTIONS 56 (2008) (see Table A-1)).
104. STATISTICAL ABSTRACT OF THE UNITED STATES, 1994, at 80; 1996 at 79, table 98; 1997 at 79, table 97; 1995 at 101; 2001, at \*; 2003, at tables 90–92; 2009 at tables 84–85; see also *Births: Preliminary Data for 2007*, National Vital Statistics Reports, vol. 57, no. 12, (Mar. 18, 2009); Paul Taylor et al., *The New Demography of American Motherhood* 1, 9, 11–14, PEW RES. CTR. (rev. Aug. 19, 2010), <https://www.census.gov/library/publications/2011/compendia/statab/131ed/births-deaths-marriages-divorces.html>; CARMEN SOLOMON-FEARS, CONG. RESEARCH SERV., RL34756, NONMARITAL CHILDBEARING: TRENDS, REASONS, AND PUBLIC POLICY INTERVENTIONS 56 (2008).
105. *More Than Four in 10 Children Are Born to Unwed Mothers*, THE HERITAGE FOUND., <http://familyfacts.org/charts/205/more-than-four-in-10-children-are-born-to-unwed-mothers>
106. Paul Taylor et al., *The New Demography of American Motherhood* 1, 2, PEW RES. CTR. (rev. Aug. 19, 2010), <http://pewsocialtrends.org/files/2010/10/754-new-demography-of-motherhood.pdf>. For more recent date see Lapp & Lapp, *supra* note 92.
107. *The Gap Between Married and Unmarried Birth Rates Has Narrowed*, THE HERITAGE FOUND., <http://familyfacts.org/charts/213/the-gap-between-married-and-unmarried-birth-rates-has-narrowed>. For more recent date see Lapp & Lapp, *supra* note 92.
108. See Wang & Parker, *supra* note 50.
109. *By Age forty-five, More Than One in Three Americans Born in the 1950's Had Divorced*, THE HERITAGE FOUND., <http://familyfacts.org/charts/165/by-age-45-more-than-one-in-three-americans-born-in-the-1950s-had-divorced> (citing U.S. Census Bureau, Survey of Income and Program Participation (SIPP) (2004)). For recent date see Lapp & Lapp, *supra* note 92.

While nearly nine out of ten couples (87%) married in the late 1950s remained married for at least ten years, only seven out of ten couples (69%) married in the early 1990s were still married after ten years.<sup>110</sup> While the percentage of first marriages that end in divorce remained relatively stable (even dropping slightly) for more than two decades, that came after nearly two decades of sharp annual increases in the divorce rate.<sup>111</sup> The recent leveling in divorce rates may be due to the fact that more first-unions are nonmarital cohabitations than ever before, many of which break-up before the parties ever marry.

#### B. The Tragic Consequence of the Disintegration of the Marriage Culture

The non-formation and break-up of marriage and resulting child-bearing and child-rearing by single parents are the major manifestations of the disintegration of the American family. These phenomena create a widening gulf between advantaged children who are raised by and have parental relationships with both their mother and their father (by birth or adoption) and disadvantaged children who are deprived of parental relationships with one or both of their parents.

As a result of these trends, there has been a dramatic increase in the number of children being raised by single-parents, mostly their mothers. The 2007 Census revealed “that 25.8% of approximately seventy-four million [American] children under eighteen (or about nineteen million children) were living in lone-parent households. . . . [A]pproximately sixteen and one-half million lived with their mothers alone.”<sup>112</sup> By 2009, that percentage had risen to 26.2%; 22.8% in mother-only homes, and 3.4% in father-only homes. The percentage of children not being raised by two parents has nearly tripled since 1960.<sup>113</sup> By 2010, nearly 40% of American children were not living with both of their biological or adoptive parents.<sup>114</sup>

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110. *Married Couples Are Less Likely to Stay Together*, THE HERITAGE FOUND., <http://familyfacts.org/charts/160/married-couples-today-are-less-likely-to-stay-together> (citing U.S. Census Bureau, Survey of Income and Program Participation (SIPP) (2004)). For recent date see Lapp & Lapp, *supra* note 92.

111. *Divorce Rate in the U.S., 2008*, NCFMR FAM. PROFILES, <https://www.bgsu.edu/content/dam/BGSU/college-of-arts-and-sciences/NCFMR/documents/FP/FP-09-02.pdf> (last visited Oct. 21, 2017).

112. Helen M. Alvare, *Father-Absence, Social Equality, and Social Progress*, 29 QUIN. L. REV. 123, 123 (2011) (citing U.S. Census Bureau, American's Families and Living Arrangements: (2009) (see Table C3)).

113. *Id.*

114. *Despite Recent Decline, Two-thirds of Children Live With Married Parents*, THE HERITAGE FOUND., <http://familyfacts.org/charts/140/despite-recent-decline-two-thirds-of-children-live-with-married-parents> (citing U.S. Census Bureau, Current Population Survey, American Children, Key

Lord Jonathan Sacks, a member of the House of Lords and Chief Rabbi of the United Kingdom explained:<sup>115</sup>

Children lucky enough to be born into strong families are advantaged in almost every area for the rest of their lives: school attendance, educational achievement, getting and keeping a job. They will earn more. They will be healthier. They will be more likely to form strong families of their own. Children who do not have that good fortune will be disadvantaged for the rest of their lives.<sup>116</sup>

Baroness Ruth Deech of the House of Lords in the United Kingdom (and a former Principal and family law professor at St. Anne's College in the University of Oxford) added: "Statistics show that the best thing for children is to live with two married parents."<sup>117</sup> Truly, marriage makes all the difference in the life-prospects of children.

#### IV. THE RISK THAT COHABITATION POSES TO MARRIAGE AND TO CHILD WELL-BEING

The substitution of nonmarital cohabitation for marriage by young American adults in recent years has impacted the marriage and divorce data.<sup>118</sup> For example, "[a]mong women, 68% of unions formed in 1997–

Indicators of National Well-Being (2010)); see also, W. Bradford Wilcox, *State of Our Unions 2010*, <http://stateofourunions.org/2010/SOOU2010.php> ("By the late 2000s, nonmarital childbirths accounted for 44 percent of children born to moderately educated mothers, 54 percent of children born to the least-educated mothers, and 6 percent of children born to highly educated mothers. . . . [C]hildren in the 2000s who have highly educated mothers are just as likely to live with their own two parents as they would have been two decades earlier. Specifically, 81 percent of these 14-year-old girls in the NSFG report were living with both parents in the 2000s, compared to 80 percent in the 1970s. By contrast, the percentage of 14-year-old girls living with both parents fell 16 percentage points for girls with moderately educated mothers and 13 percentage points for girls with least-educated mothers.").

115. Remarks of Chief Rabbi of the UK, Lord Jonathan Sacks, *PARL. DEB.*, H.L. 366 (Feb. 10, 2011) (U.K.), <http://www.publications.parliament.uk/pa/ld201011/ldhansrd/text/110210-0001.htm>.

116. *Id.*

117. Baroness Deech, *PARL. DEB.*, H.L. 374 (Feb. 10, 2011) (U.K.), <http://www.publications.parliament.uk/pa/ld201011/ldhansrd/text/110210-0001.htm>; see also Martin Beckford, *Baroness Deech: English Law No Longer has Clear Concept of Marriage*, *THE TELEGRAPH* (U.K.) (Mar. 16, 2010), <http://www.telegraph.co.uk/news/uknews/law-and-order/7449696/Baroness-Deech-English-law-no-longer-has-clear-concept-of-marriage.html>; Baroness Deech of Cumnor DBE, *Divorce Law—A Disaster???*, *GRESHAM COLLEGE* (Sept. 15, 2009), <http://www.gresham.ac.uk/lectures-and-events/divorce-law-a-disaster>.

118. Paula Y. Goodwin, William D. Mosher & Anjani Chandra, *Marriage and Cohabitation in the United States: A Statistical Portrait Based on Cycle 6 (2002) of the National Survey of Family Growth*, 23 *VITAL AND HEALTH STATISTICS* 28, 1 (2010), [http://www.cdc.gov/nchs/data/series/sr\\_23/sr23\\_028.pdf](http://www.cdc.gov/nchs/data/series/sr_23/sr23_028.pdf).

2001 began as a cohabitation rather than as a marriage”<sup>119</sup> Data from the National Survey of Family Growth conducted in 2002 and reported in 2010 revealed about 78% of marriages lasted 5 years or more, compared with less than 30% of cohabitations, but about half of cohabitations transitioned into marriages within three years.<sup>120</sup> Cohabitation seems to be influenced by prior family experience: “For example, the proportion of women who had married but did not cohabit before their first marriage was higher for women who lived with both parents at age 14 (26%) than for other women (12%) . . . .”<sup>121</sup> A CDC report in 2012 noted, “[t]he percentage of women who were currently cohabiting (living with a man in a sexual relationship) rose from 3.0% in 1982 to 11% in 2006–2010.”<sup>122</sup>

In the United States, “[p]eople are marrying for the first time at older ages, and many adults cohabit with a partner before ever marrying. Current estimates of divorce indicate that about half of first marriages end in divorce.”<sup>123</sup> Cohabitation has replaced marriage as the first partnership living arrangement. According to the report, “Cohabitation has increasingly become the first coresidential union formed among young adults in the United States. Among women, 68% of unions formed in 1997–2001 began as a cohabitation rather than as a marriage”<sup>124</sup>

Thus, cohabitation has become “the new normal” in the United States.<sup>125</sup> According to new research, “Cohabitation has increased by nearly 900 percent over the last 50 years. More and more, couples are testing the waters before diving into marriage. Census data from 2012 shows that 7.8 million couples are living together without walking down the aisle, compared to 2.9 million in 1996.”<sup>126</sup> For nearly half of those couples cohabitation is a preliminary step towards marriage, but for the other half, it is a step towards relational instability and perhaps a pattern of serial temporary relationships. One commentator noted: “Cohabitation has become so common that it’s

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119. Casey E. Copen et al., *First Marriages in the United States: Data From the 2006–2010 National Survey of Family Growth*, 49 NAT’L H. STATS. REPS., 1 (Mar. 22, 2012), <https://www.cdc.gov/nchs/data/nhsr/nhsr049.pdf>.

120. Goodwin et al., *supra* note 117 at 1.

121. *Id.* at 2.

122. Copen et al., *supra* note 119 at 5, Fig. 1; *see also* Goodwin et al. *supra* note 117 at 1.

123. Copen, *supra* note 119 at 1.

124. *Id.* at 2.

125. Jonel Aleccia, ‘The New Normal’: Cohabitation on the Rise, *Study Finds*, NBC NEWS (Apr. 4, 2013), <http://www.nbcnews.com/health/health-news/new-normal-cohabitation-rise-study-finds-f1C9208429> (quoting Pamela J. Smock, director and research professor at the Population Studies Center at the University of Michigan-Ann Arbor).

126. Lauren Fox, *The Science of Cohabitation: A Step Toward Marriage, Not a Rebellion*, THE ATLANTIC (Mar. 20, 2014), <http://www.theatlantic.com/health/archive/2014/03/the-science-of-cohabitation-a-step-toward-marriage-not-a-rebellion/284512/>.

almost odd not to test drive a partner before marriage.”<sup>127</sup> Sadly, that comment, and the attitude of many young adults who cohabit, reflects the distorted view that marriage is something you find, rather than something you work together to create and to improve over a lifetime.

The outcomes vary significantly for different kinds of relationships. Cohabitation poses several significant risks for the health and success of the parties’ subsequent marriages. Approximately two-thirds of first marriages lasted ten (10) years or more, whereas only about a quarter of men’s and a third of women’s first cohabitations were estimated to last three (3) years without either disrupting (about half) or transitioning to marriage (about half).<sup>128</sup> Data from the National Survey of Family Growth (CDC), based on face-to-face interviews with nearly 11,000 women in 1995, showed “[c]ohabitation before the first marriage was associated with a greater chance of divorce . . . .”<sup>129</sup>

Since the 1970s, study after study found living together before marriage could undercut a couple’s future happiness and ultimately lead to divorce. Researchers concluded couples who cohabited before they married had a 33% higher rate of divorce than those who waited until after they were married to live together.<sup>130</sup>

Meg Jay, a clinical psychologist, outlined the “cohabitation effect” in a widely-circulated *New York Times* op-ed in 2012. “Couples who cohabit before marriage (and especially before an engagement or an otherwise clear commitment) *tend to be less satisfied with their marriages*—and more likely to divorce—than couples who do not.”<sup>131</sup> As a CDC report noted: “It has been well documented that women and men who cohabit with their future spouse before first marriage are more likely to divorce than those who do not cohabit with their spouse before first marriage.”<sup>132</sup> However, as cohabitation becomes more common, the risks it poses may be subsiding.<sup>133</sup>

One of the principle risks of cohabitation is that couples who cohabit just “slide” from cohabitation into marriage without careful consideration and clear determination.<sup>134</sup> University of Virginia Sociologist Bradford Wilcox explained the risk: “Cohabitation fosters enough intimacy to

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127. *Id.*

128. *Id.* at 3.

129. Richard Niolon, *Cohabitation, Marriage, and Divorce*, PSYCHPAGE, [http://www.psychpage.com/family/mod\\_couples\\_thx/cdc.html](http://www.psychpage.com/family/mod_couples_thx/cdc.html) (last visited Apr. 12, 2016).

130. Fox, *supra* note 126.

131. Meg Jay, *The Downside of Cohabiting Before Marriage*, N.Y. TIMES (Apr. 14, 2012), <http://www.nytimes.com/2012/04/15/opinion/sunday/the-downside-of-cohabiting-before-marriage.html>.

132. Copen et al., *supra* note 119, at 2.

133. *Id.*

134. Fox, *supra* note 126.

facilitate childbearing but not enough commitment to make people deliberate about their choices to become parents . . . .”<sup>135</sup>

Women who never cohabited with their first husband before marriage had more than a 20% greater probability of the marriage lasting 20 years than women who had cohabited before marriage.<sup>136</sup> Children are especially disadvantaged by nonmarital cohabitation. “Growing up outside an intact marriage increases the chance that children themselves will divorce or become unwed parents. . . . Children of divorce experience lasting tension as a result of the increasing differences in their parents’ values and ideas.”<sup>137</sup> At a young age they must make mature decisions regarding their beliefs and values. Children of so-called ‘good divorces’ fared worse emotionally than children who grew up in an unhappy but ‘low-conflict’ marriage.”<sup>138</sup> Likewise, “a child living with a single mother is 14 times more likely to suffer serious physical abuse than is a child living with married biological parents. A child whose mother cohabits with a man other than the child’s father is 33 times more likely to suffer serious physical child abuse.”<sup>139</sup>

Higher education appears to correlate with more marriages and with more stable, enduring marriages.<sup>140</sup> Women with a bachelor’s degree or higher were less likely to be currently cohabiting and were more likely to be currently married for the first time compared with women with less education.<sup>141</sup> Women with a bachelor’s degree also had a higher probability of their first marriage lasting 20 years compared with women who had some college or women with a high school diploma.<sup>142</sup> Yet, ironically, premarital cohabitation has been increasing in America. That portends more unstable, difficult marriages, more disadvantaged children, and less-educated adults in the future.

The advantages of marriage for children, adults, and society are profound. For example:

Children raised in intact married families are more likely to attend college, are physically and emotionally healthier, are less likely to

135. *Id.*

136. *Id.* at 8.

137. *Why Children Need*, *supra* note 62. (citing Elizabeth Marquardt, *Ten Findings from a National Study on the Moral and Spiritual Lives of Children of Divorce*, [www.betweentwoworlds.org](http://www.betweentwoworlds.org)).

138. *Id.*

139. *Id.* (citing Patrick Fagan et al., *The Positive Effects of Marriage: A Book of Charts*, THE HERITAGE FOUND., <http://www.heritage.org/marriage-and-family/report/the-positive-effects-marriage-book-charts>).

140. Wang & Parker, *supra* note 50.

141. *Id.*

142. *Id.*

be physically or sexually abused, less likely to use drugs or alcohol and to commit delinquent behaviors, have a decreased risk of divorcing when they get married, are less likely to become pregnant/impregnate someone as a teenager, and are less likely to be raised in poverty.<sup>143</sup>

Children receive gender specific support from having a mother and a father.<sup>144</sup> Research shows that particular gender roles of mothers (e.g., to nurture) and fathers (e.g., to discipline), as well as complex biologically rooted interactions, are important for the development of boys and girls.<sup>145</sup>

A recent study of robust predictors of chronic debt identified five measures that distinguish non-debtor adults from “intermittent and chronic debtors.”<sup>146</sup> Two of them reveal the impact of divorce and family form: “living with mother and father at age 14” and “marital status in 2008” (seven years earlier).<sup>147</sup> Thus, “[g]rowing up in a two-parent home and marrying are both good for the avoidance of chronic debt.”<sup>148</sup>

Marriage is not only best for children, but it is best for parents. According to Professor W. Bradford Wilcox, a distinguished sociology professor at the University of Virginia:

[I]t is easier to parent with a partner: Two parents can invest more time in their children, they can support one another when the going gets tough, and they can encourage and monitor one another in ways that foster higher-quality parenting. And married partners in the United States are much more likely to stick together, compared to their cohabiting peers, when it comes to sharing the joys and challenges of parenting.<sup>149</sup>

#### V. CHILDREN’S HUNGER (AND NEED) TO LIVE WITH THEIR MARRIED MOTHERS AND FATHERS

Children need the parental influence of a present, responsible residential mother and father. That is best; that is the ideal. Children need

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143. *Why Children Need*, *supra* note 62 (citing Bradford Wilcox, *Why Marriage Matters: 26 Conclusions from the Social Sciences*, INST. FOR AM. VALUES, <http://www.americanvalues.org/html/r-wmm.html> (last visited Mar. 1, 2016)).

144. *Id.*

145. *Why Children Need*, *supra* note 62.

146. Bryce J. Christensen & Nicole M. King, *The Natural Family: A Natural Debt Preventative*, FAM. IN AM., <http://familyinamerica.org/journals/winter-2013/natural-family-natural-debt-preventative/#.Vww6tvkrJph> (last visited Sept. 10, 2017) (discussing Richard K. Caputo, *Patterns and Predictors of Debt: A Panel Study, 1985-2008*, 39 J. SOC. & SOC. WELFARE 7-29 (June 2012)).

147. *Id.*

148. *Id.*

149. Wilcox, *supra* note 83.

and benefit from both “mothering” and “fathering.”<sup>150</sup> Substitute parenting by a man or a nanny or a baby-sitter is not the same as “mothering,” and substitute parenting by a woman or uncle or teacher or neighbor or scout leader is not the same as “fathering.”<sup>151</sup>

A poignant illustrative example of the need for both parents (and children's hunger for both parents) comes from an opinion commentary published in 2013 in the *New York Times* by a gay adoptive parent.<sup>152</sup> He wrote:

SOMETIMES when my daughter, who is 7, is nicely cuddled up in her bed and I snuggle her, she calls me Mommy. I am a stay-at-home dad. My male partner and I adopted both of our children at birth in open domestic adoptions. We could fill our home with nannies, sisters, grandmothers, female friends, but no mothers.

My daughter says “Mommy” in a funny way, in a high-pitched voice. Although I refer the honors immediately to her birth mom, I am flattered. But saddened as well, because she expresses herself in a voice that is not her own. It is her stuffed-animal voice. She expresses not only love; she also expresses alienation. She can role-play the mother-daughter relationship, but she cannot use her real voice, nor have the real thing.<sup>153</sup>

Children need “the real thing” of parenting by *both* parents, and the relationship institution that best provides “the real thing” of both a mother and a father for children is marriage. “[W]e know that ‘levels of parental involvement, supervision, monitoring, and closeness are higher, on average,

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150. *30 Years of Research: A Child Deserves a Mother and a Father*, FOCUS ON THE FAM., <http://www.focusonthefamily.com/socialissues/marriage/teach-your-children-about-marriage/30-years-of-research> (last visited Oct. 13, 2017).

151. *Id.*

152. Frank Ligtvoet, *The Misnomer of ‘Motherless’ Parenting*, N.Y. TIMES (June 22, 2013), <http://www.nytimes.com/2013/06/23/opinion/sunday/the-misnomer-of-motherless-parenting.html>.

153. *Id.*; see also Glenn Stanton, *The Involved Father*, FOCUS ON THE FAM., <http://www.focusonthefamily.com/parenting/parenting-roles/the-involved-father/fathers-matter> (quoting renowned child psychologist Erik Erikson as stating “that a father's love and a mother's love are qualitatively different. Fathers ‘love more dangerously’ because their love is more ‘expectant, more instrumental’ than a mother's love. A father brings unique contributions to the job of parenting that no one else can replicate.”)

in two-biological-married parent families than in single-parent families.”<sup>154</sup> Moreover, other research confirms:

Divorce often appears to have a detrimental effect on the quality of children’s relationships with the custodial parent (usually the mother). A longitudinal study found that recently divorced custodial mothers exhibited many of the same problematic behaviors characteristic of parents in high-conflict families, that is more harsh discipline, less supervision, and less affection.<sup>155</sup>

. . . .  
[The] Survey of Families and Households [indicates that] divorced and remarried mothers reported fewer enjoyable times with their children, had more disagreements with them, and were more likely to yell at or spank their children.

With respect to fathers, research has shown that the amount of contact between non-custodial fathers and children tends to decline over time after divorce.<sup>156</sup>

Divorce is associated with deterioration of intimate relationships in young adults,<sup>157</sup> lower social adjustment of the children impacted,<sup>158</sup> lower education and occupational success,<sup>159</sup> “low self-esteem, behavior problems, and psychological distress.”<sup>160</sup> While divorce can protect and benefit the children in high-conflict marriages, it can be devastating for children in low-conflict marriages—which constitute the bulk of marriages that are ended by divorce in America today.<sup>161</sup>

Children also benefit from the advantages that marriage confers upon their parents. For example, a recent study found marriage delivers substantive psychological benefits even to adults who enter marriage in a state of depression.<sup>162</sup> Earlier research demonstrated that currently married people report higher levels of psychological well-being on average (measured by lower rates of depression, substance abuse, and alcoholism)

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154. Wilcox, *supra* note 84.

155. Smart Marriages, *Texas Association for Marriage and Family Therapy, 1999*, SMARTMARRIAGE, [www.smartmarriage.com/texaswhitepaper.html](http://www.smartmarriage.com/texaswhitepaper.html) (last visited on Apr. 11, 2016).

156. *Id.*

157. *Id.* at 1.2.

158. *Id.* at 1.3.

159. *Id.* at 1.4.

160. *Id.* at 1.5.

161. *Id.* at 1.1, 1.6.

162. Dan Chisolm et al., *Scaling-up Treatment of Depression and Anxiety: a Global Return on Investment Analysis*, LANCET, PSYCHIATRY (Apr. 12, 2016), [http://www.thelancet.com/journals/lanpsy/article/PIIS2215-0366\(16\)30024-4/abstract](http://www.thelancet.com/journals/lanpsy/article/PIIS2215-0366(16)30024-4/abstract) (“In terms of health impact, scaled-up treatment leads to 43 million extra years of healthy life over the scale-up period. Placing an economic value on these healthy life-years produces a net present value of \$310 billion.”).

than never-married, divorced, widowed, or separated individuals.<sup>163</sup> Also, previous longitudinal studies established “transitions into marriage . . . were associated with increases in happiness and declines in depression” for non-divorcing couples.”<sup>164</sup> Ohio State University sociologists have confirmed “those who experience the transition into marriage report better psychological well-being than their continually unmarried counterparts.”<sup>165</sup> They discover[ed] the previously depressed benefit more from marriage than the nondepressed even though their marital quality is slightly worse.<sup>166</sup>

These positive mental health advantages of marriage for adults also benefit their children both directly and indirectly. Indirectly, children benefit because less depressed parents are better parents. Directly, children benefit because the factors that provide positive mental health benefits for adults also provide positive mental health benefits directly to their children. For example, a headline in a British newspaper recently suggested one way in which children benefit in emotional health and well-being from marital families. The newspaper headline read: “Bring back family dinners to fight childhood depression, says Rantzen.”<sup>167</sup> The founder of ChildLine, a child protection and advocacy organization in the UK, Esther Rantzen, advised parents: “If we were less busy and more available to children and restored the family tea table as a place where we all meet at the end of the day and

163. Paul Amato, *Marriage, cohabitation and mental health*, AUSTRALIAN INSTITUTE OF FAMILY STUDIES, FAMILY MATTERS NO. 96 (June 2015), <https://aifs.gov.au/publications/family-matters/issue-96/marriage-cohabitation-and-mental-health>; see also Bryce J. Christensen & Nicole M. King, *The Single-Parent Handicap—Even in Western Europe*, 29 THE FAMILY IN AMERICA, no. 3, 2015, <http://familyinamerica.org/journals/summer-2015/single-parent-handicapeven-western-europe/#.WchVotOGP78> (last visited Apr. 28, 2016); Tyler J. Vanderweele, *What the New York Times Gets Wrong about Marriage, Health, and Well-Being*, NAT'L REV. (June 2, 2017), <http://www.nationalreview.com/article/448189/social-science-research-marriage-improves-mental-physical-health> (“the study begins by reporting that entry into marriage for unmarried men and women is associated with subsequently lower depression, while divorce is associated with subsequently higher depression. The study also notes even larger effects of moving into marriage on increasing life satisfaction, as well as larger effects of divorce on decreasing life satisfaction....”).

164. Amato, *supra* note 163.

165. Adrienne Frech & Kristi Williams, *Depression and the Psychological Benefits of Entering Marriage*, 48 J. HEALTH & SOC. BEHAV. 149, 154 (2007), <http://journals.sagepub.com/doi/pdf/10.1177/002214650704800204>.

166. *Id.* at 155; see also Jareen Imam, *Treating Anxiety, Depression Can Help Global Economy, Study Says*, CNN (Apr. 12, 2016), <http://www.cnn.com/2016/04/12/health/anxiety-depression-treatment-economy-irpt/index.html>.

167. Anna Davis, *Bring back family dinners to fight childhood depression, says Rantzen*, EVENING STANDARD, Apr. 14, 2016, at 8. (“Parents should bring back family dinner time to stem the rising numbers of children feeling depressed and suicidal, the founder of ChildLine urged. Esther Rantzen said she believes children are less safe than they were 30 years ago when she launched the helpline.”).

talk together, then children would be aware someone cares about them.”<sup>168</sup> She added “research . . . has shown that ‘if a family eats together the family feels much happier and more united.’”<sup>169</sup>

Similarly, recent research emphasized “family structure stands out as one of the ‘family/environmental determinants’ of children’s health-related quality of life.”<sup>170</sup> One study of data reported by parents of 10,651 children in the Netherlands between 2001–2009 concluded: “Compared to children in single-parent families, children living with two parents came in with a significantly higher overall score for health-related quality of life ( $p=0.04$ ).”<sup>171</sup> The disparate outcomes for the different family structures was underscored in the Psychosocial Summary Scale (PsS) of the report which noted that “living in single-parent families was a significant contributor to PsS score variance: a lower mean score was observed for children living in a single-parent family [ $p < 0.01$ ].”<sup>172</sup> The evidence of the impact of different family structures upon child well-being clearly is very relevant to contemporary concerns for child welfare.

Marriage increases the likelihood that a mother will be able to be a stay-at-home mom full-time or at least part-time, rather than being a full-time employee in the paid workforce. Most mothers of children aged eighteen and younger prefer to be full-time home-maker-mothers or to work only part-time. Mothers are “voting with their feet” to stay at home with their minor children.<sup>173</sup> The Pew Research Center reported the percentage of mothers who stayed at home with their minor children fell from 49% in 1967 to 23% in 1999, but the share of stay-at-home mothers has increased to 29% in 2012.<sup>174</sup> Several factors influence this trend in favor of stay-at-home mothering, including “continued public ambivalence about the impact of working mothers on young children.”<sup>175</sup> While the number of children being raised by a “‘traditional’ Stay-at-Home Mother” was only half of the 40% it was in 1970, in 2012 still 20% of children were being raised by a married stay-at-home-mom.<sup>176</sup> Sixty percent of Americans responded that children are better off when they have a stay-at-home parent—nearly double the percentage of Americans who thought children were just as well off when

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168. *Id.*

169. *Id.*

170. Christensen & King, *supra* note 161.

171. *Id.*

172. *Id.*

173. D’Vera Cohn, Cretchen Livingston & Wendy Wang, *After Decades of Decline, A Rise in Stay-at-Home Mothers*, PEW RES. CTR. (Apr. 8, 2014), <http://www.pewsocialtrends.org/2014/04/08/after-decades-of-decline-a-rise-in-stay-at-home-mothers/> (last visited May 5, 2016).

174. *Id.*

175. *Id.*

176. *Id.*

both parents work.<sup>177</sup> And even unmarried mothers were less likely to prefer full-time work in 2007 (26%) than in 1997 (49%). Moreover, stay-at-home moms are increasingly affirming their status, believing that “not working at all” is best (39% in 1997; 48% in 2007). Likewise, the percentage of mothers with preschool children that claim that full-time work is ideal dropped from 31% in 1997 to 16% in 2007.<sup>178</sup>

The prestigious American Law Institute (herein “ALI”) is preparing a new addition to its influential Restatement of the Law series. The new project is to produce a “Restatement of the Law, Children and the Law.”<sup>179</sup> Thus, at the highest level of academic scrutiny, strengthening families—the core purpose and function of marriage—has been recognized as critical to the well-being of children and to the future and the well-being of society.

Children also clearly benefit economically from marriage. Two scholars writing for the Heritage Institute put it well when they concluded that: “[the] collapse of marriage is the principal cause of child poverty and welfare dependence.”<sup>180</sup> As two respected authorities on welfare and poverty, Robert Rector and Patrick Fagan, have noted: “the poverty rate among single-parent families is about five times higher than the poverty rate among married-couple families.”<sup>181</sup>

Thus, marriage has been a key element in the strategy to reduce poverty and welfare dependence in America. As Fagan and Rector explained: “The designers of welfare reform were concerned that prolonged welfare dependence had negative effects on the development of children. Their goal was to disrupt inter-generational dependence by moving families with children off the welfare rolls *through increased work and marriage*.”<sup>182</sup>

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177. *Id.*

178. *2016's Best & Worst States for Working Moms*, THE NAT. FAM. (May 5, 2016), <http://familyinamerica.org/newsletter/may-5-2016-what-moms-really-want-mothers-day/>.

179. *Projected Overall Table of Contents*, AM. L. INST., <https://www.ali.org/projects/show/children-and-law/> (last visited Oct. 14, 2017).

180. Patrick Fagan & Robert Rector, *The Continuing Good News About Welfare Reform*, HERITAGE BACKGROUNDERS (Feb. 6, 2003), <http://www.heritage.org/research/reports/2003/02/the-continuing-good-news> (last visited Mar. 24, 2016).

181. *Id.*

182. *Id.* (emphasis added). (Ironically, “[t]hroughout the War on poverty period, marriage eroded. However, since the welfare reform was enacted, this negative trend has begun to reverse. The share of children living with single mothers has declined, while the share living with married couples has increased.”).

## VI. CONCLUSION: THE NEED TO REVITALIZE MARRIAGE FOR THE SAKE OF CHILDREN

Two scholars writing for the Heritage Foundation summarized the main point this paper attempts to establish when they wrote: “*The current neglect of marriage is scandalous and deeply injurious to the well-being of children.*”<sup>183</sup> They also identified the key to solving the poverty problem when they declared: “The most effective way to reduce child poverty and increase child well-being is to increase the number of stable, protective marriages.”<sup>184</sup> Marriage is the first and best measure of a society’s (and a family’s and an individual’s) commitment to the welfare of children.

That conclusion was confirmed by University of Virginia sociologist W. Bradford Wilcox who wrote: “No other institution reliably connects two parents, and their money, talent, and time, to their children in the way that marriage does.”<sup>185</sup> So, the challenge for our time is to find and provide a way to “increase the likelihood that every . . . child may be ‘raised by his or her own parents in a strong and stable marriage’[.]”<sup>186</sup>

Anne Kim correctly emphasized:

[M]arriage enables the enormous logistical, emotional, and economic benefits in what’s now the high-stakes enterprise of middle-class and upper-middle-class parenthood. A second income helps pay for the football uniform or for a babysitter to shuttle Junior to his piano lesson if a parent is unavailable to do the driving. A second parent means one more set of eyes on the homework and one more voice to enforce discipline. And the returns to investing in children—such as by ensuring them a college education—have certainly grown over the decades.<sup>187</sup>

There are many things that governments can do that might strengthen and enhance marriages. For example, as noted earlier, educational achievement correlates with increased likelihood that first marriage will remain intact for twenty years.<sup>188</sup> Promoting education, especially among women, could produce great benefits for marriage stability and endurance. Likewise, as noted above, reducing the incidence and rates of nonmarital

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183. *Id.* (emphasis added).

184. *Id.*

185. Wilcox, *supra* note 83.

186. *Id.*

187. Kim, *supra* note 41.

188. See generally Copen et al., *supra* note 119, at 8, Fig. 5; see also *id.* (“However, women who cohabited with their first husband—regardless of whether they were engaged when they began living together—had lower probabilities of marriage survival at 20 years than women who did not cohabit before marriage with their first husband.”) Interestingly, the same is not true for men.

cohabitation could result in fewer poorly-considered, struggling marriages and lower divorce rates.<sup>189</sup>

Many individuals and institutions are committed to protecting children and helping children to develop, thrive and flourish. Sometimes, however, as an old axiom puts it, “too many cooks spoil the broth.” So, “[a] collaborative . . . approach between the different service providers who care for children and young people” is critical.<sup>190</sup> The key is for all persons, agencies and programs who are interested in fostering the welfare of children “to work together.”<sup>191</sup> There needs to be a common theme that unites all the programs, agencies and individuals who are seeking to promote the welfare of children. That theme should be marriage.

It could be said that we live in a world that has been flattened by self-interest.<sup>192</sup> The diminution of respect for marriage is an especially troubling manifestation of that tragedy because as marriage recedes, the welfare of children suffers and hope for the future dims.

Marriage may be the best hope for the future of children. That means marriage is the best hope for the future of society. For the sake of our children and future generations, we need to revitalize and re-invigorate a culture of marriage in our countries today.

The overwhelming weight of social science research clearly confirms children raised by two married parents experience clear life advantages. That does not diminish the exemplary efforts and remarkable successes of many single parents who sacrifice for and serve their children with loving commitment.<sup>193</sup> It does, however, encourage responsible lawmakers and

189. Kim, *supra* note 41.

190. Jewell, *supra* note 3.

191. *Id.*

192. See generally Samuel Fleischacker, *Adam Smith's Moral and Political Philosophy*, STAN. ENCYCLOPEDIA OF PHILOSOPHY (Jan. 27, 2017), <https://plato.stanford.edu/entries/smith-moral-political/> (last visited Oct. 14, 2017); see also Jenet Jacob Erickson, *Suffer the Little Children: How A Culture Centered on Individuals' Rights Has Impacted the Lives and Wellbeing of Children*, 5 THE WHEATLEY OBSERVER, no. 3, 2016, at 35, [https://wheatley.byu.edu/wp-content/uploads/2017/06/2016.Vol5\\_Iss3\\_SummerWEB.pdf](https://wheatley.byu.edu/wp-content/uploads/2017/06/2016.Vol5_Iss3_SummerWEB.pdf); Jenet Erickson, *Marriage and Motherhood: What Gender Equality Really Looks Like* (Apr. 19, 2017), <http://wheatley.byu.edu/marriage-and-motherhood-what-gender-equality-really-looks-like/>.

193. See generally Stephanie Peatling, *Children of Single Parents Disadvantaged for Longer*, Sydney Morning Herald (July 11, 2013), <http://www.smh.com.au/federal-politics/political-news/children-of-single-parents-disadvantaged-for-longer-20130710-2pqg0.html> (summarizing report of the Australian Productivity Commission warning that “Children growing up in single parent families are one of the groups most likely to face ongoing and entrenched disadvantage . . . .”); Martin Beckford, *Children in Single-Parent Families More Likely to Suffer Emotional Problems, Report Finds*, THE TELEGRAPH, (Oct. 21, 2008), <http://www.telegraph.co.uk/news/politics/3235650/Children-in-single-parent-families-more-likely-to-suffer-emotional-problems-report-finds.html> (“Young people whose mother and father split up are also three times as likely to become aggressive

serious family law scholars to recognize and support loving, faithful and committed marriages as the best gift that parents can give to their children, and the best hope our generation can provide for the future of our societies. Promoting, strengthening and facilitating wise marriages should be a primary goal of all efforts to benefit children.

Marital discord and parental unhappiness certainly impacts children's well-being in a negative way, and so does the experience of going through a divorce.<sup>194</sup> Children in very high conflict homes may benefit by being removed from the conflict while efforts to help the parents are provided. In lower-conflict marriages (and perhaps as many as two-thirds of divorces are of this type),<sup>195</sup> the situation of the children can be made much worse following a divorce. "These children benefit if parents can stay together and work out their problems rather than get a divorce."<sup>196</sup>

All marriages have some good days and some bad days, some ups and some downs. But divorce always is painful and detrimental, especially to children of divorcing parents. Research of a large national sample conducted throughout the United States found "86% of people who were unhappily married in the late 1980s, and stayed with the marriage, were happier when interviewed five years later. Indeed, 60% of the formerly unhappily married

or badly behaved, according to the comprehensive survey carried out by the [U.K.] Office for National Statistics.").

194. See generally Hal Arkowitz & Scott O. Lilienfeld, *Is Divorce Bad for Children*, SCI. AM. (Mar. 1, 2013), <https://www.scientificamerican.com/article/is-divorce-bad-for-children/> (noting that while most children of divorce cope resiliently, still "[d]ivorce frequently contributes to depression, anxiety or substance abuse in one or both parents and may bring about difficulties in balancing work and child rearing. These problems can impair a parent's ability to offer children stability and love when they are most in need."); Jann Gumbiner, *Divorce Hurts Children, Even Grown Ones*, PSYCHOLOGY TODAY (Oct. 31, 2011), <https://www.psychologytoday.com/blog/the-teenage-mind/201110/divorce-hurts-children-even-grown-ones> (last visited Oct. 2, 2017) ("For me, I lost my entire extended family: beloved grandparents, aunts, uncles, and cousins. Divorce hurts children and it hurts them immediately, in the short term. . . . Divorce even has long-term consequences for grown children. First, it affects their relationships.").
195. Elizabeth Marquardt, *Just Whom Is This Divorce 'Good' For?*, WASHINGTON POST, (Nov. 6, 2005), <http://www.washingtonpost.com/wp-dyn/content/article/2005/11/04/AR2005110402304.html> ("After those marriages end, the children suddenly struggle with a range of symptoms -- anxiety, depression, problems in school—that they did not previously have. . . . For the children of low-conflict marriages, divorce is a massive blow that comes out of nowhere."); Michael J. McManus, *Children of divorce: Psychological, psychiatric, behavioral problems*, DIVORCEFORUM, <http://www.divorcereform.org/psy.html> (last visited Oct. 2, 2017) ("[T]wo-thirds of those who divorce who are in low-conflict marriages, should work harder to save their marriages, or at least wait until children are grown before divorcing. Only a third of the divorced said that they and ex-spouses tried to save the marriage.").
196. *Why Married Parents Are Important For Children*, FOR YOUR MARRIAGE, <http://www.foryourmarriage.org/married-parents-are-important-for-children/> (last visited Mar. 2, 2016).

rated their marriages as either 'very happy' or 'quite happy.'"<sup>197</sup> Similarly, "a team of leading family scholars headed by University of Chicago sociologist Linda Waite . . . found no evidence that unhappily married adults who divorced were typically any happier than unhappily married people who stayed married."<sup>198</sup>

Some marriages are disastrous, and some persons (including some married adults and their children) are better off after divorce than during a toxic marriage. But the research supports the oft-heard reflection on divorce—as a divorced neighbor once told my wife: "If I had known then what I know now, I never would have gotten divorced." That reflection is a sober warning. To ignore it is to neglect and consign to decades of sorrow struggling couples (and families) who might, with some compassionate support, encouragement, guidance and training work through their difficulties and develop the skills needed to create and maintain happy and successful marriages.

Nelson Mandela wisely observed: "There can be no keener revelation of a society's soul than the way in which it treats its children."<sup>199</sup> That simple but profound truth should motivate us to put the welfare of children as a top priority in our family law reforms. It is clear that the safest, best environment we can provide for children is a marital family founded on the healthy marriage of their parents. Marriage provides the best institutional setting and support for good parenting. Thus, providing marital families for all children is a goal worthy of the best efforts of responsible societies. Revitalizing marriage is a challenge that will need the wisest law reform efforts and the best legal scholarship that the legal academy, the legal profession, and society can offer. A fundamental goal of that scholarship and those reforms should be to promote, strengthen, and facilitate the establishment and improvement of marriage in our laws, programs, and our societies.

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197. *Id.*

198. LINDA J. WAITE ET AL., DOES DIVORCE MAKE PEOPLE HAPPY? FINDINGS FROM A STUDY OF UNHAPPY MARRIAGES, (2002), <http://smartmarriages.com/does.divorce.html> (last visited May 9, 2016).

199. Nelson Mandela, *Speech by President Mandela at the launch of the Nelson Mandela Children's Fund*, NELSON MANDELA FOUND. ARCHIVES (May 8, 1995), [http://db.nelsonmandela.org/speeches/pub\\_view.asp?ItemID=NMS250&txtstr=Mahlamba&pg=item](http://db.nelsonmandela.org/speeches/pub_view.asp?ItemID=NMS250&txtstr=Mahlamba&pg=item).

