A Prospective Analysis of Family Fragmentation  
or Baby Mama Drama Meets Jane Austen

By Lynne Marie Kohm,* Copyright 2014


“Single women have a dreadful propensity for being poor – which is one very strong argument in favor of Matrimony...”1

Nineteenth century novelist Jane Austen, a single woman all her life in a socio-legal culture that afforded women no legal or economic rights, understood the consequences of a lack of income and wealth, and wrote about it from a perspective that entertained millions while teaching readers about old English laws of primogeniture and the consequences to single women. While never a mother, Austen’s insight and advice are salient today in a prospective analysis of broken or never-formed families, commonly described as family fragmentation.

Family fragmentation has significant societal effects on family law.2 Never-formed families are generally characterized by non-marital childbearing,3 and are often comprised of impoverished single mothers with young children.4 Nearly half of all children born in American today are born outside of marriage.5 “The phenomenon of non-marital childbearing rose steadily in the 1980s and then sharply in the mid-2000s…. more than double the level of 1980...”6

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3 Unmarried childbearing characterizes a never-formed family “where one parent is not living with the child, causing the family to never form, or producing a lack of family formation.” Id. at 27, n.7.

4 Maria Cancian & Deborah Reed, Family Structure, Childbearing, and Parental Employment: Implications for the level and trend in poverty, in CHANGING POVERTY, CHANGING POLICIES 92, 109 (Maria Cancian & Sheldon Danziger eds., 2009)(showing poverty rates by household as greatest for single mothers); also available at http://www.irp.wisc.edu/publications/focus/pdfs/foc262d.pdf.


Accompanied by a drop in marriage rates in the United States, unmarried child bearing is the essence of a never-formed family, and may be contributing to a very noticeable gap in marriage and income inequality. Because the millennial generation will have the lowest rates of marriage by age 40 than any previous generation, and marriage tends to increase wealth and income, the economic welfare of current and future children raised without a married mother and father, and their future families, may be in jeopardy. There is increasing evidence that family form is one causal factor in these outcomes, but it is also true that poverty and other factors go a long way in explaining the differential. A brief exploration of the effects of never-formed families on American society may prove helpful for the future of American families and family law. Here, Baby Mama Drama will meet Jane Austen, a woman who keenly understood the plight of single women.

that the recession beginning in 2007 pushed numbers down slightly). In 2013, “there were 1.6 million births to unmarried women, down 7% from a peak of 1.7 million in 2008.” Id. Though cohabiting families may also increase unmarried child-bearing, this paper will focus on never-formed families headed by single mothers.


12 Baby Mama Drama refers to a significant sub-culture of never-formed families. See the many definitions, with added quotations and illustrations for a better understanding of the concept of baby mama drama, at Urban Dictionary, http://www.urbandictionary.com/define.php?term=Baby%20MaMa%20DraMa. Baby Mama is a 2008 comedy film from Universal Pictures written and directed by Michael McCullers is the story of a successful, single businesswoman (Tina Fey) who dreams of having a baby discovers she is infertile and hires a working class woman (Amy Poehler) to be her unlikely surrogate. Baby Mama (2008), http://www.imdb.com/title/tt0871426/. The movie created a term that has become part of pop culture lingo, particularly after a reality show hyped its usage in “The Real Babymamas of Richmond,” which follows the struggles of a group of single moms in the Richmond,
This article considers the scope, direction and pace of changes in families and family law with a focus on never-formed families to discuss what effects those changes may produce in America and in American law in the future. Part I considers the law and economics of never-formed families as manifested in single motherhood. From 1980 to 2015, child birth statistics and parental obligations are examined in the context of societal economics. In the framework of single motherhood as characterizing the lion’s share of never-formed families the article then examines fatherlessness and its effect on children and society at large. It also considers how the notion of human capital is either advanced or subjugated for individuals in never-formed families. Part II then considers marriage law trends, the marriage market and income inequality in the context of family fragmentation and never-formed families. Part III offers an attempt to look down the road ahead for the future of the family in light of the never-formed family trend, from 2015 to 2040. This section examines marriage markets and suggests policy changes to strengthen families for the next generation.

The changes effected in America and American family law due to family fragmentation are illustrated in the magnified consequences of never-formed families to children and to society. A prospective analysis could begin to offer a clearer path to avert some of that jeopardy to both.

I. The Economics of Single Motherhood

Non-marital birth rates have been on a steady rise from the late 1970s into the 21st century, and they now exceed 40 percent for the population as a whole.13 While these births are


declining for vulnerable teenagers, they are higher for women in their 30s, and it is unlikely that nonmarital childbearing will disappear. “In fact, four in ten births in the U.S. continue to occur to unmarried women – and more than half of all births to women under 30 are to unmarried women.” White college graduates becoming mothers show a non-marital birth rate at five percent, up from two percent before the financial crisis of 2008. Furthermore, while 58 percent of those births appear to occur in cohabiting relationships, those never-formed families tend to be less stable over time than marriage, creating more instability for the mother and child.

Higher cohabitation rates and lower marriage rates are illustrated by the numbers. Young adults are getting married at dramatically lower rates than the previous generation. “If current trends continue, more than 30% of millennial women won’t be married by 40, almost twice the number of Generation X women.” Due to the two-fold phenomenon of changing social norms toward cohabitation and a U.S. economy in recession, the role of marriage is shifting. While “these changing social norms will not stop some couples from wanting to tie the knot, [it could lead to others deciding it’s not needed.] Indeed, more millennial mothers are single than

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15 The 2014 National Center for Health Statistics (NCHS) report “finds that women aged 35 and older actually experienced increases in nonmarital birth rates over the past 5 [five] years.” NCHS WSJ Report, supra note 5.
16 Id.
17 Cahn and Carbone, supra note 13.
18 Id. The NCHS report also found that 43 percent of non-marital births to cohabiting couples in 2010 were unintended. NCHS WSJ Report, supra note 5. Instability can be attributed to the extra costs of child-bearing without the assistance from a second parent, cost of child care, education costs, less available parental working hours due to child care and other parenting responsibilities.
19 The instability is greater economically because of these extra costs associated with having and raising a child coupled with the inability of a single parent to work while simultaneously providing child care for that child.
21 Id.
22 Id. Kline and Mann were quite concerned with long term changes to the big wedding tradition itself, which could tend to minimize the importance of marriage for children as they grow up. Id.
married, and the less education a young woman has the higher the probability that she will become a mother before she gets married.\textsuperscript{23} This leads to a growing marriage divide as more than half of all babies born to mothers who don’t have college degrees are also born outside of marriage, compared to less than ten percent of babies born to mothers with college degrees.\textsuperscript{24} When marriage declines, children lose the personal and economic benefits that marriage provides\textsuperscript{25} because marriage of the child’s parents (or the lack thereof) impacts the quality and stability of that child’s life. Research illustrates that children with the least educated parents are less likely to grow up with both parents.\textsuperscript{26} Middle-class parents who are moderately educated with a high school diploma are “increasingly less likely to … get and stay happily married.”\textsuperscript{27} Children of these parents are necessarily underprivileged by both the lack of family stability and family wealth. “[T]hese children are now doubly disadvantaged. Not only do they have fewer economic resources, they also are less likely to benefit from the shelter, security, and stability typically afforded by an intact, married family. To be clear, many children raised in single-parent or blended-families turn out okay. But it’s also the case that children raised in such families are less likely to thrive than their peers from intact families.”\textsuperscript{28} These facts combine with economic realities to show some great emerging societal inequalities. Even though one study showed a decline in unmarried child-bearing,\textsuperscript{29} another explained that apparent decline with shifts in pregnancies in the United States, revealing that

\begin{thebibliography}{99}
\bibitem{25} These benefits would include two parents to provide love and care for the child, most likely stable housing, and dual parental support in education, and personal decision-making.
\bibitem{26} Wilcox, \textit{supra} note 24.
\bibitem{28} Wilcox, \textit{supra} note 24.
\bibitem{29} Sally C. Curtin, Stephanie J. Venture, and Gladys M. Martinez, \textit{Recent Declines in Nonmarital Childbearing in the United States}, NCHS Data Brief No. 162 (Aug. 2014)(showing a peak in nonmarital childbearing in 2008).
\end{thebibliography}
reducing unintended pregnancy and non-marital child bearing “likely requires addressing socioeconomic inequities.”

An economic approach to never-formed families provides a powerful framework for understanding and analyzing the dramatic changes in the family during the last half-century, and crystallizes to focus attention on those aspects primarily responsible for changing the family over time. Renowned Chicago economist Gary Becker in his Treatise on the Family discusses the connections between the family and the state from an economic perspective. He asserts that “the efficiency perspective implies that the state is concerned with justice for children” where their well-being is the prime factor in an economic analysis. While the effect on parents is certainly considered, the state tends to intervene when both parent and child gain, or when the gain to children exceeds the loss to their parents. For example, unmarried mothers tend to rely more on public benefits than on other sources of support.

Payments to mothers with dependent children are reduced when the earnings of parents increase, and are raised when additional children are born or when fathers do not support their children. It is a program then that raises the fertility of eligible women, including single women, and also encourages divorce and discourages marriage (the financial well-being of recipients is increased by children and decreased by marriage). In effect, welfare is the poor woman’s alimony, which substitutes for husband’s earnings. The expansion of welfare, along with the general decline in the gain from marriage, explains the sizeable

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32 See id. generally.


34 See Becker, supra note 31, where with Kevin M. Murphy, he argues that they “cannot prove that efficiency guides state involvement in the family, but that they seem to try to show that state interventions in the market for schooling, benefits, financial support, as well as benefits such as social security and access to divorce “are consistent on the whole with the efficiency perspective.” Id. at 363.
growth in the ration of illegitimate to legitimate birth rates despite the introduction of the pill and other effective contraceptives.\textsuperscript{35}

Yet, America has one of the worst child poverty indicators in the industrial world, according to Fordham University social science professor Marc Miringhoff.\textsuperscript{36} It seems the Becker’s premise is correct - “The growth of the welfare state has been a powerful force that has changed family in recent decades.”\textsuperscript{37}

The change is apparent in the replacement of father support by state support has had unique and unexpected collateral effects. Discussing how fathers matter, new research explains genetic and epigenetic links that are unique to fathers and their children, while other studies explore the impact of fathers’ presence or absence.\textsuperscript{38} But while the research is growing, there is no clear divide in many studies between the biological and the psychological; in other words: “Being around dads affects children’s biology, which in turn affects their mental states, like happiness, and their success in life.”\textsuperscript{39} Economists discuss this as a form of parental altruism, where support for the importance of altruism comes from the time and effort parents devote to lowering the probability of harm coming to their children.\textsuperscript{40} This analysis “recognizes that frequent contact among family members often raises the degree of altruism,”\textsuperscript{41} leaving a fatherless child in an undesirable arrangement. Better child well-being means better welfare and

\textsuperscript{35} Becker, \textit{supra} note 31, at 356-57.
\textsuperscript{37} Becker, \textit{supra} note 31, at 356.
\textsuperscript{38} See generally \textit{PAUL RAEBURN, DO FATHERS MATTER? WHAT SCIENCE IS TELLING US ABOUT THE PARENT WE’VE OVERLOOKED} (Farrar, Straus and Giroux 2014).
\textsuperscript{40} See Becker, \textit{supra} note 31, at 365.
\textsuperscript{41} \textit{Id.} Becker and Murphy discuss altruism toward children in the context of gifts and bequests from parent to children, but it does not seem unreasonable to liken this behavior to a dearth of altruism when fathers are not present with their children. \textit{Id.}
better economic conditions for children which can be better fostered with the active presence of a loving and engaged father.

This notion of parental altruism is closely connected to parental investments in the human capital of their children. The notion of human capital is an important aspect of economics that may be neglected in a discussion on never-formed families. Charles Wheelan, in his easy-to-understand book *Naked Economics* explains it this way: “Human capital is the sum total of skills embodied within an individual: education, entrepreneurial vigor, even the ability to throw a baseball fast. It is what you would be left with if someone stripped away all of your assets.”

He explains why human capital is so significant for families.

> “Human capital is about much more than earning more money. It makes us better parents, more informed voters, more appreciative of art and culture, more able to enjoy the fruits of life… Educated parents are more likely to put their children in car seats and teach them about colors and letters before they begin school. In the developing world, the impact of human capital can be even more profound. Economists have found that a year of additional schooling for a woman in a low-income country is associated with a 5 to 10 percent reduction in her child’s likelihood of dying in the first five years of life.”

Human capital has a micro-economic effect on an individual family, and a macro-economic effect on the common good. “Similarly our total stock of human capital – everything we know as a people – defines how well off we are as a society.” Human capital matters so much because it is inextricably linked to the most important economic notion of productivity. “High levels of human capital create a virtuous cycle; well-educated parents invest heavily in the human capital of their children. Low levels of human capital have just the opposite effect.

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44 Id. at 105-06.
45 Id. at 107. “Will our children be better off than we are? Yes, if they are more productive than we are, which has been the pattern throughout American history. Productivity growth is what improves our standard of living.” Id. at 108.
Disadvantaged parents produce disadvantaged children…”46 Wheelan sums up the future in a human capital sense - “Will our children be better off than we are? Yes, if they are more productive than we are…”47 Equally frank is the analysis by Becker and Murphy discussing weakly altruistic parents, who may inadvertently raise their own consumption at the expense of their children’s.48 They note that families without assets or bequests to leave their children may also underinvest in the human capital of their children, unintentionally imposing a “large debt burden on their children.”49 This also imposes a larger burden on society in the big picture.

Applying these principles to never-formed families, it becomes apparent that poor parents, such as single mothers, are less likely to make efficient investments in their children, creating an even greater need for state intervention in areas of education and other provisions to raise human capital investments in children.50

These ideas about human capital have profound implications for public policy, and are directly impacted by single motherhood. “Birth control, no matter how dependable, works only to the extent that families prefer fewer children. As a result, one of the most potent weapons for fighting population growth is creating better economic opportunities for women, which starts by educating girls.”51 This is indeed a major economic discussion, where higher education for women has shown that those women are having children later in life, and having fewer children, and more likely are having those children with an educated and engaged father.52 Furthermore,
children benefit from an involved, responsible, committed father. \(^{53}\) “[R]aising children without involved fathers places them at much higher risk for a range of poor outcomes and causes the ills we see in so much of society.” \(^{54}\) Fathers who are educated about their importance to their children, and are encouraged to be involved with their children, to be responsible, committed fathers, children, moms and dads are better off, creating strong families as a result. \(^{55}\) Without both active and occupied mothers and fathers in a child’s life, the void created by the circumstance of a never-formed family gets filled when the “state then tries to reproduce the effects on children’s behavior of an optimal degree of commitment by parents.” \(^{56}\)

These circumstances are affected by marriage markets in an economic sense, and laws and trends in a culture sense, and together in the next section will begin to throw more light on the phenomenon of the never-formed family.

II. Marriage Markets, Laws & Trends

The term “marriage market” might describe the process of choosing a marriage partner as “a high-stakes negotiation to find the most promising person, both emotionally and financially, for a lifelong commitment. It is a contract that comes with rights and responsibilities defined and enforced by law.” \(^{57}\) This marriage market negotiation seems to be precisely what Jane Austen faced in December of 1802 when she accepted a proposal from a wealthy young man one evening, but immediately rescinded her acceptance the next morning. \(^{58}\) Possibly feeling compelled to avert the economic plight of a single woman in that time, she accepted, but then

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\(^{54}\) Id. (discussing Cahn and Carbone, supra note 13).

\(^{55}\) Id.

\(^{56}\) Becker, supra note 31, at 369.


\(^{58}\) JANE AUSTEN, SELECTED LETTERS 95, 244, 272 (Oxford World Classics 1995).
thought better of it the next day and declined his offer for marriage. It seems like the marriage market Austen faced could not be reconciled with her desires for happiness, despite her understanding of the consequent poverty without mutually beneficial matrimony. While life, laws and culture in 1802 dictated a woman accept nearly any marriage proposal she received, the laws and culture of America today allow women many more choices for their own provision, welfare, and happiness. Those choices are still, nonetheless, dictated by provisions and increasing overall utility from greater welfare. A recent Pew Research poll found that the number one thing women want in a happy marriage is a man with a steady job. Yet, “[p]articipation in the labor force among men – particularly young men - has fallen significantly in recent decades. Only 82% of men ages 25 to 34 were in the workforce in 2012, down from 93% in 1960.” The current marriage market with all its economic implications appears not to be what women want.

Marriage markets nonetheless direct the flow of money. In their work on marriage markets Professors Naomi Cahn and June Carbone take on class and rising inequality between women of different status, while advancing policy recommendations for addressing an unfair marriage market which focus on economic solutions. “[T]he economy is central to changing gender expectations and therefore to a culture that supports or undermines family stability.”

59 Austen, supra note 1.
60 Tami Luby, What do women want in a husband? A job! CNN Money.com, Sept. 26, 2014, at http://money.cnn.com/2014/09/24/news/economy/single-americans-on-rise-pew/ (citing a Pew Research poll that found 78% of all women surveyed stated that solid employment was the quality they most wanted in a lifelong mate).
61 Id.
62 Money flows from employers to individual employees, to their marriage partners, and to their children, families and households. The higher paid the participants, the better the marriage market. On the other hand, a poor marriage market with relatively low paid participants tends to create a weak marriage market, causing some women to choose to forgo marriage but nonetheless begin child bearing. This analysis comes from a combination of my understanding of the economic work of Becker and the scholarship of Cahn and Carbone.
64 Cahn and Carbone, supra note 13.
The type of productivity roles that women and men play affect marriage markets, or the terms under which men and women find it worthwhile to forge lasting relationships. Educational levels are a key indicator. “College graduates still largely forge lasting relationships (typically with one another), but they hedge their bets by delaying marriage and childbearing until they have a better idea of where they (and the partners to whom they commit) are likely to end up – concentrating elite advantage in the process as they overwhelmingly raise their children in financially secure, two-parent families.”65 Becker explains that “participants in marriage markets maximize their utility subject to the competition from other participants.”66 This means that efficient marriage markets match persons with similar characteristics.67 This seems to be borne out in the statistics on education and marriage, as those with a high degree of education tend to marry each other; and those with less education marry less.68 The result is increasing the notion of marriage inequality on both an individual level and a larger societal level, as the trend fortifies or entrenches the phenomenon of marriage inequality.

Connections between the economy and marriage are important. The share of American adults who have never married is at an historic high. In 2012 one fifth of all adults age 25 and older have never been married, compared to the less than one tenth of all adults that fell into that range in 1960.69 Current economic activity is at somewhat of an historic low, with high rates of unemployment particularly for young men, as 82 percent of men ages 25 to 34 employed in 2012, compared to 93 percent of men in the labor force in 1960.70 This means that the pool of

65 Id.
66 Becker, supra note 31, at 225.
67 Id.
70 Id.
men with steady jobs for women to marry is shrinking, a factor making marriage less attractive for women. The current marriage market works to highlight income inequality.

Wheelan discusses income inequality in the larger context. “Most economists would agree that the gap between America’s rich and poor is growing larger. Why? Human capital offers the most insight into this social phenomenon.”71 Relating this notion to women and marriage he writes,

> With these changing fortunes [of disappearing high-paying manufacturing jobs for men], the larger group of successful women in the center seeks to pair with a shrinking group of comparable men. Sociologists find that these middle-income women, especially the whites, cycle through more cohabiting partners than any other American women: they move in with a partner, marry, divorce, and cohabit with someone else more often than any other group. For them, changing marriage markets have profoundly changed family patterns.72

Combining Wheelan’s economic notions with the interdisciplinary ideas of Cahn and Carbone yields a new understanding of the disadvantage created for a society of never-formed families. “Inequality thus matters to overall social health and it matters to the well-being of future generations.”73 The process spells great disadvantage for children born into never-formed families. Furthermore, single mothers are at another disadvantage. Researchers have put the “motherhood wage penalty” – what a mother loses in wages when she has a child due to child care, need for flexibility for child welfare, and decisions that affect experience and position choices – at anywhere from 3% to 15%.74 This then gives a negative incentive to forgo public benefits.

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71 Wheelan, supra note 42, at 112. Wheelan continues with a discussion of how skilled American workers have always earned higher wages than other unskilled workers, and that difference has started to grow at a remarkable rate, illustrating that “human capital has become more important, and therefore better rewarded, than ever before…. Our economy is evolving in ways that favor skilled workers…” Id. at 112.
72 Cahn and Carbone, supra note 13.
73 Id.
74 Shah, supra note 8.
Some suggest that there is no easy solution for fixing America’s economy or its marriage problem, but recognition that the two are inseparable is a critical beginning to policy making.75

III. The Road Ahead

What lies ahead for the future of the family in light of family fragmentation from never-formed families? What will the family look like in 2035? This article has discussed how greater gaps in children’s education, income, and human capital result from single motherhood; that greater marriage gaps in marriage markets foster more stark income inequality concerns, creating less promising futures for children of never-formed families. How can law and policy confront these problems toward a more affirming future for children born today to never-formed families?

It may be that the central problem is that the law largely ignores family well-being until a family falls apart and then intervenes in a manner that often makes things worse through reliance on public benefits or burdensome tax rates and economic circumstances that can result from family fragmentation, what Professor Clair Huntington calls “negative family law.”76 She argues instead that to strengthen society family law must be reoriented to nurture strong, stable, positive relationships, with a primary focus on children.77 Huntington claims that particularly for children born to unmarried parents it is essential to strengthen relationships between those parents, and that requires a reorientation of the role the legal system already plays in relationships. “To foster strong, stable, positive relationships does not mean calling for a cradle-to-grave welfare system.”78 Rather, the dramatic changes underway in American families make it more critical to find ways to fortify and foster strong relationships between parents for the benefit of the child.79

Stable relationships can be encouraged in structural family law by long-term commitment

76 Huntington, supra note 11, at xiii.
77 See generally id. at Part 2.
78 Id. at xv.
79 Id.
between parents that will include among other avenues the statutory promotion of marriage.\(^{80}\) When marriage stability was explored in the context of multicultural marriages, a study found that lasting marriage was made possible by a host of supportive social factors that contributed to the quality of the relationship.\(^{81}\)

Social and economic factors contribute to opportunity and welfare. A family centered on marriage plays a critical role in providing the foundation necessary for a child to enjoy freedom and pursuit of opportunity. Non-marriage and non-work are intertwined, as explains Professor Larry Mead of New York University explains,\(^{82}\) suggesting that the marriage gap may be driving poverty and inequality.\(^{83}\)

Non-work promotes the non-formation of families.\(^{84}\) Failure to work regularly often causes low-skilled men to become absent fathers.\(^{85}\) Children who are born into fatherless homes are less prepared to work and marry than children from families with two parents\(^{86}\) – they are more likely to end up pregnant as teenagers, get involved with crime, and struggle in school,\(^{87}\) perpetuating economic divides in the next generation. Mead explained that working women can also have a pro-marriage effect; studies have shown that women who are required to work are more likely to marry because when low-income adults have more income, they think they can

\(^{80}\) Id. at conclusion. Huntington also argues for legal recognition to be offered to a broader range of families to accomplish those objectives. Id.

\(^{81}\) Maatta Kaarina, Jaana Angle & Satu Uusiautti, *How to have a long-lasting multicultural marriage? Introducing the accumulation theory of multicultural romantic relationships*, 3 J. SOCIAL SCIENCES 381 (Jul. 2014). Particularly in the face of unique challenges facing multicultural couples, an accumulation of relationship skills and interpersonal care between spouses, supportive surroundings and society all worked to foster long-term multicultural marriages. Id. at 390-92.


\(^{83}\) IAV/Conversations, Lawrence Mead, conversation recorded and live streamed before an audience at the Center for Public Conversation, New York City, April 18, 2013, [http://www.americanvalues.org/conversations/](http://www.americanvalues.org/conversations/).

\(^{84}\) Mead, supra note 82, at 41.

\(^{85}\) Id.

\(^{86}\) Id.

afford to get married (even though the converse is true - if they married, they would likely have greater income). Education levels also have a pro-marriage effect. Those who are college educated are more likely to marry and stay married, since they want their children to repeat their patterns.

Marriage is one of the strongest predictors of economic immobility of poor children across the nation. Most children born outside of marriage are raised in female-headed families, where “the poverty rate among children . . . is at least four times as great as the poverty rate in married-couple families.” Although high school and college graduation rates have improved over the past half-century, such drivers of opportunity have been offset by declines in marriage and family stability. “Marriage, not money, now marks the chief dividing line between classes in America.”

Cahn and Carbone argue that to adequately understand diverging patterns of family structure, we must be willing to confront the impact of greater inequality on marriage markets-on the way that men and women match up with each other. “Our conclusion in Marriage Markets is that the only place where marriageable men outnumber the comparable group of women is at the top, and this ratio reinforces a more stable family culture.”

Policy incentives influence individual choices and shape the environment in which individuals are able to pursue opportunity, particularly where welfare policy that supports a never-formed family with a cash card rather than an opportunity to succeed has discouraged both

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88 Mead, supra note 82.
89 Id.
90 Id. Of course there are other connections regarding love and marriage that can cause individuals to fall outside the constraints presented by these economic principles, but the point is that economic principles matter greatly in this discussion of future family stability.
92 Wilcox, supra note 87, at 21.
93 Cahn and Carbone, supra note 13.
94 Id.
marriage and work.\textsuperscript{95} “The poor might become disenfranchised to the point that they reject important political and economic institutions, such as property rights or the rule of law.”\textsuperscript{96}

Wheelan concludes his work with an epilogue of some examples, from which we can extrapolate this scenario: What would give the family of a baby girl born tomorrow an incentive to invest in her human capital?\textsuperscript{97} Rather, policies to foster and advance parental investment in the human capital of their children could work to level the playing field for the next generation of young adults who are now being born into never-formed families.

Yet marriage may indeed be a piece of the solution. Good marriage policy could work as an incentive to accomplish these objectives, utilizing both economic and legal inducements. Two recent studies have found that married working mothers are better off financially than working moms who have never been married. Columbia University and Russell Sage Foundation scholar Jane Waldfogel finds that U.S. mothers in their prime-working years (25-44) face about a 5% “motherhood wage penalty” as opposed to childless women workers; and never-married mothers face about an 11% wage penalty or gap. She attributes this to two major things – the fact that married working mothers are likely getting help from husbands on things at home and with the kids, allowing that woman to secondly continue to build that “human capital” we’ve discussed in Part II. “Never-married mothers, the logic goes, may be less likely to get such support from their partners, and find it harder to stay attached to the labor force. Indeed, some of the partners in question may not be around at all.”\textsuperscript{98} The second set of research by the late

\textsuperscript{95} Mead, supra note 82.
\textsuperscript{96} Wheelan, supra note 42, at 114. Wheelan calls this a “more pragmatic concern about rising income inequality. Might the gap between rich and poor – ethics aside – become large enough that it begins to inhibit economic growth? Is there a point at which income inequality stops motivating us to work harder and become counterproductive?” Id. Then he adds, “Or class warfare may lead to measures that punish the rich without making the poor any better off.” Id. at 115.
\textsuperscript{97} Wheelan uses a different, more global example: “Will the family of a baby girl born tomorrow in rural India have an incentive to invest in her human capital?” Id. at 236.
\textsuperscript{98} Shah, supra note 8.
sociologist and family demographer Suzanne Bianchi of UCLA with Sara Raley at McDaniel College and Pew Research Center’s Wendy Wange found that an increasing married fathers’ involvement with kids was liked to higher employment and earnings among wives.  

“Combined, these studies about the benefits of marriage in dollars and cents point to a much larger social problem – that of the growing divide between America’s married women and the growing numbers of unmarried working mothers has potentially increased the inequality among mothers.”

In other words, “Marriage…is becoming… an incubator of growing social and economic disparities.” Marriage researcher Brad Wilcox takes this a step further, noting that “more educated, more affluent and also more religious Americans that tend to get married in the first place”… seem to gain “a starting advantage over their peers who aren’t married.”

Marriage appears to make a tremendous difference.

The greatest concern is that while marriage is the healthy and desired alternative for most, the experiences of marriageable people today actively work to decrease their future marital satisfaction. A study by research professors Scott Stanley and Galena Rhoades found lower marital quality was most closely associated with having a child before marriage, followed by having numerous sexual partners before marriage, and cohabiting with multiple partners

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100 Shah, supra note 8.
101 Id.
102 Linn, supra note 11.
before marriage. While some disputed the study in terms of the impossibility of proving causality between these factors and personal selection, it is clear that having a child before marriage limits a woman’s marriage market thereafter, even if purely due to a lack of time to develop a relationship because of child care responsibilities. One study on fragile families and child welfare that studies behavior problems for children indicated that “growing up with a single mother (whether that family structure is stable or unstable over time) seems to matter more than instability for behavior problems.” So while marital status cannot cause instability or discrimination against a non-marital child as both parents are still legally liable for his or her welfare, and parental rights are not based on marriage, but rather on parentage, marriage still provides for the best interests of children, and their parents.

Combining this legal benefit to a child with economic incentives to parents might offer some prospective policy guidance. “Economics teaches us how to get the incentives right.” Wheelan notes that economist have a powerful tool: “We know that people seek to make themselves better off, however they may define that.” The negative externality, or individual and social costs, of marital commitment leading to never-formed families might be offset by actual incentives for marriage. Government regulations might be able to assist with this

106 Stanley and Rhoades sensitively handled both the critics and their concerns by discussing how choices limit other choices, but still showing the possibility for caution, wisdom and aspiration by an individual’s exercise of personal choice. “Whatever their prior life experiences and demographic characteristics, understanding the potential impact of relationship experiences on outcomes can empower individuals to make choices that bring them closer to achieving their aspirations.” Stanley, supra note 103.
107 Id. at 42.
110 The concept of negative externalities says simply that the loss of income from any activity will be a disincentive for that particular activity. So just as the never-formed family creates a loss of income to the single parent, that in itself will be the negative externality. That activity will contribute to the external costs imposed on other people
significant externality. For example, an increasing marriage tax credit for the benefit of each year of marriage might forestall that lack of commitment and turn it into a long-term legal commitment. Dartmouth economist David Blanchflower and University of Warwick economist Andrew Oswald have found that a lasting marriage is worth $100,000 a year, since married people report being as happy, on average, as divorced (and not remarried) individuals who have incomes that are $100,000 higher.\footnote{Id. at 155.} Indeed, as a new report from Johns Hopkins University found about Millenials – the less educated Millenials were, the more likely they were to have a child without getting married, forcing the report to conclude “If marriage retains its place anywhere, it would be among the college graduates, because most of them do not begin to have children until after they are married.”\footnote{Jana Kasperkevic, Children or College? The Debate around Millenials and Single Parenthood, THE GUARDIAN, Jun. 18, 2014.} Andrew Cherlin, lead researcher of the study pointed out that unmarried, less-educated woman, on the other hand, “can’t see the future” and so have no reason to put off having children.”\footnote{Id.} Women who are high-school drop outs have the lowest marriage rate of all, at 28%, and according to Cherlin, the US is known for shortest cohabiting relationships.\footnote{Id.}

Unmarried couples have a high break up rate in the first few stressful years after the birth of a child, and this often leads to what’s called “multi-partner fertility,” or in the vernacular many “different baby mamas,” or in academic language, family instability, which in turn leads to “the calcification of social inequality.”\footnote{Luscombe, supra note 23.}

Economic justice for lower income families may take the shape of “more generous child and earned-income tax credits, as well as for the elimination of the marriage penalties embedded in many of our public policies directed toward lower-income families. Policy moves like these would strengthen the fragile financial foundations of many poor and working-class families.”

Still, Cahn and Carbone disagree that policy-making is the solution, but rather see a friendlier economic environment as key to family stability. “The solutions to changing family structure do not depend on marriage promotion policies. Instead, we should create jobs and greater support for those cycling in and out of increasingly unstable workplaces, and family change will follow.”

The Australian marriage policy experience, however, offers more evidence that policy-making does indeed offer solutions. In their Pro-Marriage Policy Assessment study, three Australian researchers looked at the results of a 1987 marriage policy that ended a subsidy for marriage. “In late August of 1987, the Austrian Minister of Finance quite unexpectedly announced the suspension of the marriage subsidy that had been in place since 1972: couples marrying before the end of 1987 would receive it, but there would be no subsidy thereafter. Not surprisingly, the marriage rate spiked in late 1987.” The key methodological point was that even marginal marriages declined after the subsidy ended. “The couples who married during that time are an unknown combination of those who would have married then anyway, those who rushed their planned weddings to capture the subsidy before it went away, and those who would not have married in the near future but for the policy change.” This unknown combination became somewhat known by considering the marriage dearth in early 1988 to estimate the

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117 Wilcox, supra note 24.
118 Cahn and Carbone, supra note 13.
120 Id.
121 Id.
number of accelerated marriages, and then attributing the rest of the excess marriages in late 1987 to “marginal marriages,” i.e., those that would not have occurred without the policy change. Marginal marriages were defined as those marriage matches that became acceptable only because of the increased cost of a longer search. “Consequently, marginal marriages should be of lower match quality than average marriages, whose match quality would be sufficient even without state intervention.” The researchers then analyzed the stability of marginal marriages not just because “the benefits of marriage require a certain level of marital stability to materialize,” but also because “expected or actual stability is a prerequisite for marital investment.” Because it takes expected or actual stability to promote investing in children, the research was trying to determine whether that objective could be accomplished in marginal marriages. The results were surprising in that marginal marriages appeared to be just as stable as average marriages. Therefore, the “outcomes in marriages promoted by state policy do not

\[122 Id.\]
\[123 Id.\]
\[125 Id.\]
\[126 Frimmel, et al, supra note 118. The study also discussed an unexpected and difficult to explain finding, that marginal marriages yielded 17% fewer children, and those children were more likely to have a lower birth weight. Frimmel and his colleagues compared the fertility and child health outcomes from marginal marriages to average marriages and found them wanting—but is that the right comparison? In Austria, more than half of reproductive-aged women are unmarried, but these women account for only 39% of all births. Back-of-the-envelope calculations confirm that the fertility of single women is more than 17% below that of married women; therefore, despite the fertility “deficit” of marginal marriages, they still result in higher fertility than if the marriages had not occurred. This would be a problem if those additional children were more likely to become children of divorce, but they are not. With respect to infant birthweight, Frimmel’s other recent work is instructive: women marrying during pregnancy in Austria had heavier babies than those who remained single. Pregnant brides can be expected to have lower match quality than other brides (in Frimmel’s terminology, pregnancy increases the cost of a longer search), but marriage still increased birthweight. So even though those in marginal marriages are more likely to have low-birthweight children than those in average marriages, there is reason to believe the odds of healthy birthweight are improved by marginal marriage.\]

DeRose, supra note 123.
have to match those in other marriages to represent an improvement."  

Even marginal marriages promoted purely by Australian state policy created family stability across society.

American policies, while reflected in state domestic relations law generally, could be particularly advanced by federal tax policy. Specifically, simple policies could be implemented to incentivize family stability through marriage. First, amend the federal code. Federal public benefits requirements could be amended to remove the barrier currently established by non-marriage status as a requirement for receipt of benefits. As Wheelan states, “Economics teaches us how to get the incentives right.” The Internal Revenue Code could be amended to remove the marriage penalty, and to promote a marriage credit. Incentivizing marriage, rather than penalizing it, would make a significant difference. These suggestions would work to level the playing field of marriage to begin to reduce marriage inequality, particularly among the poor.

Second, stabilize child welfare. Waldfogel, Craigie and Brooks-Gunn suggest three types of policy reforms that could improve outcomes for children. The first requires a reduction in children growing up in fragile families (such as promoting stability among unwed parents). With the second they suggest addressing the pathways that place children born into never-formed families at risk, such as boosting resources in single-mother homes or fostering father involvement in fragile families. Thirdly, they suggest directly addressing the risks that children born into never-formed families face, suggesting home-visiting policies, or high-quality early childhood education. Making education more accessible for poor children appears to be a key. One way to begin this process might be to substitute a particular public benefit for accessible education for single mothers, or to encourage single mothers to value highly their

127 DeRose, supra note 123.
128 Wheelan, supra note 42, at 33.
129 Waldfogel, supra note 107, at 110.
130 Id.
131 Id.
children’s education. This could work in two ways to increase the educational opportunity and potential for never-formed families, while also breaking the cycle of low education levels for children of never-formed families.

Making these small alterations could make a large difference for the next generation of children born into never-formed families. Rather than a lack of support, father contact, and parental investment in their human capital, like children born from 1985-2015, implementing these policies in 2015 would allow children born from 2015-2035 to experience greater opportunity for personal development and family stabilization. The ratio of non-marital births has been relatively stable at 40.6% of all births over the past 7-8 years. Without changes in law and policy that ratio is unlikely to change. This stability is thought to be connected to stable rates of cohabitation. “If American cohabitation bore much resemblance to a marriage, this would be good news. But to date, analyses that break down the outcomes for children born to unmarried women living alone and unmarried women living with a man (who may or may not be the biological father of the child) have not shown an advantage for the child born to cohabiting parents.” Stability for children would require incentivizing child bearing toward marriage and away from cohabitation.

Restoring a culture of marriage is a critical piece to the puzzle of family fragmentation. Marriage researcher Dr. Alan Hawkins has set out a strategy for couples to use to strengthen their relationships that includes marriage. [Develop with another sentence here from Hawkins’ book.] Strong, healthy marriages and families are the center of a strong, healthy society, and

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133 Id.

134 Id.


provide personal happiness and purpose to women, children, and men in true human flourishing. Policy to empower people toward those objectives is necessary to future health and stability.

Can marriage make a comeback? Some argue that family strength is the underpinning of President Obama’s economic recovery message. Delay of marriage has become the President’s “surprisingly traditional justification for helping young people reduce their student loan debt.”

Connecting marriage with education and wealth appears to be what will make a pro-marriage policy popular. Doing so could work to head off the next generation of impoverished children from perpetuating the economic cycle of never-formed families by averting the outcome of eventually becoming poorly educated single-parent adults. “Single women have a dreadful propensity for being poor – which is one very strong argument in favor of Matrimony…” The advice and insight of 19th century novelist Jane Austen two hundred years ago is salient today in any prospective analysis of family fragmentation.

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137 Sheffield, supra note 133.
139 Id. “This moment encapsulates the overlooked underpinning of President Obama’s economic message: his focus on family. It is an approach fit for our times, as families in America face extraordinary pressures, obstacles and burdens. Both parties would be wise to emulate this in the upcoming midterm elections.” Id.
140 Austen, supra note 1.