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INTIMACY AND INEQUALITY: THE CHANGING CONTOURS OF FAMILY LIFE

RICHARD R. BANKS*

INTRODUCTION

For this inaugural issue of the *Indiana Journal of Law and Social Equality*, I examine some of the socioeconomic, racial, and gender inequalities associated with the decline of marriage in American society. However intimate and personal a marriage, its consequences are social as well. As described in my book, *Is Marriage for White People?*,¹ the marriage decline has been concentrated among the economically disadvantaged of all races and among African Americans of all socioeconomic categories. The waning of marriage among those groups may exacerbate already troubling class and racial disparities.

I. RACE AND CLASS INEQUALITY AND THE MARRIAGE DECLINE

During the past half century, marriage has become a less universal and less stable social institution. The percentage of adults in the United States who are married is lower now than it has ever been.² Some people marry later in life, while others do not marry at all.³ And, of course, many marry and divorce.

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1 RALPH RICHARD BANKS, *IS MARRIAGE FOR WHITE PEOPLE? HOW THE AFRICAN AMERICAN MARRIAGE DECLINE AFFECTS EVERYONE* (2011).

2 Richard Fry & D'Vera Cohn, *Women, Men and the New Economics of Marriage* PEW RESEARCH CTR. 5 (2010), <http://www.pewsocialtrends.org/files/2010/11/new-economics-of-marriage.pdf>.

3 *Id.* at 19.

The marriage decline is most apparent among educationally and economically disadvantaged Americans. The lower a woman's level of education, for example, the less likely she is to marry and stay married.⁴ Economically disadvantaged people are also less likely to marry and more likely to divorce than their more advantaged counterparts.⁵ College-educated people often marry later in life than their predecessors, but they continue to marry at high rates and their relationships are more stable than suggested by the oft-repeated (and probably erroneous) statistic that half of all marriages will end in divorce.⁶ Roughly four of every five college-educated couples who marry remain married twenty years later.⁷

The divergence in the family patterns of the affluent and the disadvantaged is a fairly recent development. Through the middle decades of the 20th century, the disadvantaged and the affluent were about equally likely to be married.⁸ During the 1950s, marriage rates were high and divorce rates were uniformly low.⁹ Since then, the marital experiences of the affluent and the disadvantaged have diverged.

4 See Steven P. Martin, *Growing Evidence for a "Divorce Divide"? Education and Marital Dissolution Rates in the U.S. since the 1970s*, 20 (2004).

5 BANKS, *supra* note 1, at 28.

6 See Martin, *supra* note 4.

7 NAOMI CAHN & JUNE CARBONE, *RED FAMILIES V. BLUE FAMILIES: LEGAL POLARIZATION AND THE CREATION OF CULTURE* 39–40 (2010).

8 See BANKS, *supra* note 1, at 27–28.

9 James R. Wetzel, *American families: 75 years of change*, MONTHLY LAB. REV. 5–7 (1990), <http://www.bls.gov/mlr/1990/03/art1full.pdf>.

Among racial and ethnic groups, the marriage decline is most apparent among African Americans, who are the most unmarried group in American society.¹⁰ More than two out of every three adult black women are unmarried, and they are more than twice as likely as white women never to marry.¹¹ Black men are also less likely to marry than their white counterparts. There is also a racial gap in divorce. African American couples are more likely than couples of other races to divorce.¹² Some studies have found that more than fifty percent of African American couples divorce within the first ten years of marriage, compared to less than one-third of white couples.¹³

Here too the divergence in marital fortunes is a fairly recent development. Through the middle of the 20th century, African Americans married at rates comparable to whites. Then, as marriage declined throughout American society during the 1970s and 1980s, it declined the most for African Americans.

The marriage decline among the disadvantaged and among African Americans is worrisome because it may compound race and class inequalities, burdening children in particular. The marriage decline has led to an unprecedented increase in unwed childbearing. In the United States today, children are more likely than ever to be born to

10 See ANGELA J. HATTERY & EARL SMITH, *AFRICAN AMERICAN FAMILIES* 44 (2007); see generally *THE DECLINE IN MARRIAGE AMONG AFRICAN AMERICANS: CAUSES, CONSEQUENCES, AND POLICY IMPLICATIONS* (M. Belinda Tucker & Claudia Mitchell-Kernan eds., 1995); Fry & Cohn, *supra* note 2, at 5–6.

11 See Fry & Cohn, *supra* note 2, at 6; HATTERY & SMITH, *supra* note 10, at 44.

12 M. Belinda Tucker & Claudia Mitchell-Kernan, *Trends in African American Family Formation: A Theoretical and Statistical Overview*, in *THE DECLINE IN MARRIAGE AMONG AFRICAN AMERICANS: CAUSES, CONSEQUENCES, AND POLICY IMPLICATIONS* 3, 12 (M. Belinda Tucker & Claudia Mitchell-Kernan eds., 1995).

13 BANKS, *supra* note 1, at 8.

unmarried parents.¹⁴ Roughly forty percent of children are born to parents who are not married.¹⁵ Among whites, nearly all of the increase in unwed childbearing has occurred among the economically disadvantaged.¹⁶ Consider, for example, that among white women who have their first child in their early twenties (a group that is disproportionately economically disadvantaged since college-educated white women tend to delay childbearing until their late twenties or thirties),¹⁷ a full sixty percent of those mothers are not married.¹⁸ Among African Americans, the percentage of children born to unmarried parents is even higher; nearly seventy percent of black children are born to unmarried parents.¹⁹

These children are unlikely to receive the myriad benefits of being raised by both of their parents.²⁰ Many unmarried couples are living together at the time of their child's birth, yet such cohabitating couples are much less likely to remain together than are couples who

14 See UNMARRIED COUPLES WITH CHILDREN 3 (Paula England & Kathryn Edin eds., 2007); Matthew D. Bramlett & William D. Mosher, *Cohabitation, Marriage, Divorce, and Remarriage in the United States*, NAT'L CTR. FOR HEALTH STAT. (2002), http://www.cdc.gov/nchs/data/series/sr_23/sr23_022.pdf; Gladys Martinez, Kimberly Daniels & Anjani Chandra, *Fertility of Men and Women Aged 15–44 Years in the United States: National Survey of Family Growth, 2006–2010*, NAT'L CTR. FOR HEALTH STAT. Table 11 (2012), <http://www.cdc.gov/nchs/data/nhsr/nhsr051.pdf>.

15 Gretchen Livingston & D'Vera Cohn, *The New Demography of American Motherhood*, PEW RES. CTR. 1 (2010), <http://www.pewsocialtrends.org/files/2010/10/754-new-demography-of-motherhood.pdf>.

16 Martin, *supra* note 4, at 17–18.

17 Livingston & Cohn, *supra* note 15, at 9.

18 BANKS, *supra* note 1, at 69.

19 U.S. CENSUS BUREAU, *AMERICA'S FAMILIES AND LIVING ARRANGEMENTS: 2004*, Table C2 (2004), <http://www.census.gov/population/www/socdemo/hh-fam/cps2004.html>.

20 Bramlett & Mosher, *supra* note 14, at 4.

are married at the time of their child's birth.²¹ Thus, the children of unmarried couples, whether cohabitating or not, are less likely to live with both of their parents than are the children of married parents. This may be less the case in some other countries, such as Sweden, where the distinction between marriage and cohabitation is not as stark as it has been historically in the United States.²² We may eventually move toward a Scandinavian model in which marriage becomes less culturally and socially significant, but we are not there yet.

When the parents are not together, children lose out on the social and economic advantages that a stable parental relationship can provide. Marriage is, of course, no panacea for economic deprivation, but there are obvious benefits to two parents functioning as a single economic unit. The parents are able to invest more in their child—in high quality day care and in educational opportunities—if the parents live together rather than apart. The cruel irony is that those parents who are least able to afford to maintain separate households are the most likely to do so.

Children also benefit from the continuity and stability that married parents can provide. For the non-resident parent, typically the father, to maintain a relationship with the child can be challenging. The mother may, for example, decide to relocate, or simply may not facilitate the child's relationship with the father. This challenge is compounded as the

²¹ See Tomáš Sobotka & Laurent Toulemon, *Changing Family and Partnership Behaviour: Common Trends and Persistent Diversity Across Europe*, 19 DEMOGRAPHIC RES. 85, 122 (2008).

²² *Id.* at 101.

parents enter other relationships with new partners. As the father forms new romantic interests, a mother might become less inclined to support his relationship with the child. And new romantic relationships that the mother enters, particularly with a live-in partner, might prove disruptive for the child.

The consequences of being raised by a single parent are likely worse in the United States than in other countries because in the United States, the government provides so little support for families and children.²³ The more the government does to support children's needs—through, for example, health care, paid work leave for parents, quality preschool and elementary school education—the less differences in family resources matter. Conversely, the less the government invests, the more family resources matter. When families are unable to invest, and the government does not invest, children suffer.

II. EXPLAINING THE MARRIAGE DECLINE

While the decline of marriage among the economically disadvantaged and among African Americans is often attributed to a supposedly distinctive (or deviant) culture,²⁴ there is little evidence to support that view. In fact, the race-based and class-based gap in

²³ See David Popenoe & Barbara Dafoe Whitehead, *The State of our Unions: The Social Health of Marriage in America*, THE NAT'L MARRIAGE PROJECT 11 (2005).

²⁴ See CHARLES MURRAY, *COMING APART: THE STATE OF WHITE AMERICA 1960–2010* (2012); Ralph Richard Banks, *Charles Murray's "Coming Apart" and the Culture Myth*, THE DAILY BEAST (Feb. 8, 2012, 12:23 AM), <http://www.thedailybeast.com/articles/2012/02/08/charles-murray-s-coming-apart-and-the-culture-myth.html>.

marriage primarily reflects the tension between a broadly shared cultural understanding of marriage on the one hand, and changing economic realities on the other.²⁵

Marriage has declined as a social institution, but not as a cultural ideal. Americans from all classes and racial groups continue to want to marry. According to a recent assessment by sociologist Andrew Cherlin, annual surveys of high school seniors completed since the 1970s have consistently shown that four out of five young women and seven out of ten young men report that they expect to marry and that “having a good marriage and family life” is extremely important.²⁶

What has diminished is not people’s desire to marry, but rather the legal and social necessity of doing so. People used to marry because it was the only socially acceptable way to live together in a sexual relationship and to have children.²⁷ As recently as the 1960s, it was illegal to have sex without being married.²⁸ A child born to an unmarried mother was designated “illegitimate” or worse, a “bastard.”²⁹ People married for economic reasons as well. During agrarian times, marriage was a means of securing a partner to work a farm. More recently, prior to women’s entry into the full-time workforce, many married for economic support.

25 BANKS, *supra* note 1, at 21–23, 25–28.

26 ANDREW J. CHERLIN, *THE MARRIAGE-GO-ROUND* 137 (2009).

27 BANKS, *supra* note 1, at 18.

28 *Id.* at 19.

29 *Id.*

Now, marriage is no longer a prerequisite for life as an adult. Making a living, having sex, rearing children, setting up a household with a partner—all no longer require marriage. Although claims about the legal significance of marriage abound, the reality is that marriage entails fewer legal rights now than ever in American history.³⁰ Some state and federal laws still turn on whether one is married, but much less so than in the past. And, in any event, specific laws often burden married couples more than they benefit them.³¹ Married couples, for example, may become liable for each other's debts, including medical expenses. While marriage is often associated with tax benefits, if both spouses work, as is most often the case, the couple will pay more in taxes than if they were unmarried.³²

Even as the practical necessity of marriage has waned, its symbolic significance has persisted, and perhaps even become more potent. The cultural primacy of marriage is reflected starkly in the ongoing battle over same-sex marriage. Both sides premise their arguments on the symbolic significance of marriage. One side argues that the institution is too meaningful to keep same-sex couples out, and the other that it is too sacred to allow them in. The federal government has also seized on marriage. The federal government,

³⁰ *Id.* at 20.

³¹ *See generally* CONG. BUDGET OFF., FOR BETTER OR FOR WORSE: MARRIAGE AND THE FEDERAL INCOME TAX xiii–xix (1997).

³² *Id.* at 1.

under both Democratic and Republican administrations alike, has undertaken programs to promote marriage.³³ Some state governments have done the same.³⁴

Along with the diminished legal necessity of marriage and its persistent symbolic significance, people's expectations of marriage have shifted. Marriage is more of a relationship and less of an institution these days. Perhaps more than ever, marriage is understood now as a means of personal fulfillment and individual growth. The primary purpose of marriage in the view of most Americans, is the establishment of a mutually fulfilling relationship, one in which understanding and emotional intimacy prevail.³⁵ Surveys show that most people want to marry a soul mate.³⁶ Marriage now is less a means of building a life and more a means of enjoying one's life.

Marriage used to be a necessity, and now it is more of a luxury. As with most luxuries, we expect it to make us happy, to fulfill us. Also, as with most luxuries, the affluent are best able to afford it. The affluent are able to form marriages that satisfy the high expectations associated with marriage, but for less advantaged people, their high expectations of marriage often clash with an incompatible economic reality.

33 The Clinton Administration's 1996 welfare reform law featured the promotion of marriage as a goal of the policy. Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104-193, § 101, 110 Stat. 2110, 2110 (1996). The second Bush Administration implemented a Healthy Marriage Initiative, which the Obama Administration has continued. 42 U.S.C. § 603(a)(2) (2006).

34 BANKS, *supra* note 1, at 23.

35 Cary Funk & April Clark, *As Marriage and Parenthood Drift Apart, Public is Concerned About Social Impact*, PEW RES. CTR. 29 (2007), <http://www.pewresearch.org/assets/social/pdf/Marriage.pdf>.

36 David Popenoe & Barbara Dafoe Whitehead, *The State of our Unions 2011: The Social Health of Marriage in America*, NAT'L MARRIAGE PROJECT 6 (2001), <http://www.stateofourunions.org/pdfs/SOOU2001.pdf>.

As people's expectations of marriage have risen, the economic stability needed to realize those aspirations has, for many people, eroded. During the past few decades, the economic opportunities for working class men, and for black men in particular, have deteriorated. The pivotal economic change that has contributed to the marriage decline is the erosion of the economic opportunities for men who have not attended college.³⁷ During the past several decades, globalization and technology have transformed the labor market.³⁸ As jobs have been automated or outsourced overseas, opportunities for the least-educated workers have diminished dramatically.³⁹ And among less-educated workers, men have suffered more than women.⁴⁰ Economist David Autor has documented this phenomenon in eye-opening detail.⁴¹ According to Autor, the decline in jobs for less-educated workers has been uneven across industries.⁴² Jobs in the industrial sector, including manufacturing steel and building cars, have declined precipitously, and the remaining jobs pay far less than they

37 See generally Daron Acemoglu & David Autor, *Skills, Tasks and Technologies: Implications for Employment and Earnings* (Nat'l Bureau of Econ. Res., Working Paper No. 16082, 2010); David H. Autor & David Dorn, *The Growth of Low Skill Service Jobs and the Polarization of the U.S. Labor Market* (Nat'l Bureau of Econ. Res., Working Paper No. 15150, 2009) [hereinafter Autor & Dorn, *Low Skill Service Jobs*]; David Autor, *The Polarization of Job Opportunities in the U.S. Labor Market: Implications for Employment and Earnings*, THE HAMILTON PROJECT & CTR. FOR AM. PROGRESS (2010), http://www.brookings.edu/papers/2010/04_jobs_autor.aspx [hereinafter Autor, *Job Opportunities*].

38 See Acemoglu & Autor, *supra* note 37; Autor & Dorn, *Low Skill Service Jobs*, *supra* note 37; Autor, *Job Opportunities*, *supra* note 37; N. Gregory Mankiw, *Give Me Your Tired, Your Poor and Your Economists, Too*, N.Y. TIMES, February 10, 2013, [http://www.nytimes.com/2013/02/10/business/how-economics-has-benefited-from-immigration.html?_r=0#h\[\]](http://www.nytimes.com/2013/02/10/business/how-economics-has-benefited-from-immigration.html?_r=0#h[]).

39 See generally Acemoglu, *supra* note 37, at 20; Autor, *Job Opportunities*, *supra* note 37, at 12.

40 See Acemoglu & Autor, *supra* note 37; Autor & Dorn, *Low Skill Service Jobs*, *supra* note 37; Autor, *Job Opportunities*, *supra* note 37.

41 See Acemoglu & Autor, *supra* note 37; Autor & Dorn, *Low Skill Service Jobs*, *supra* note 37; Autor, *Job Opportunities*, *supra* note 37.

42 See Autor, *Job Opportunities*, *supra* note 37, at 5.

did before deindustrialization.⁴³ Well-paying and secure factory jobs are now less plentiful because this work moved overseas to cheaper labor markets, leaving fewer jobs for men with less education.⁴⁴ The job opportunities remaining for less-educated workers tend to be female-dominated service positions that cannot easily be outsourced, such as home health-care aides, child-care providers, and food-service workers.⁴⁵

As the job market for less-educated workers has weakened, the market for highly educated workers has grown stronger.⁴⁶ While high school dropouts earn about sixteen percent less than their counterparts thirty years ago did, college graduates over that same period have experienced earnings gains of between ten and thirty-seven percent.⁴⁷ Wages have fallen at the bottom of the job ladder, and they have risen at the top,⁴⁸ widening the wage gap between less-educated and more-educated workers. College graduates have long earned more than high school graduates, but the earnings gap has been growing for the past thirty years. Now, according to Autor's estimates, college graduates earn nearly double the

43 *Id.* at 14.

44 *Id.* at 12.

45 See Acemoglu & Autor, *supra* note 37, at 21.

46 See Mankiw, *supra* note 38.

47 See Acemoglu & Autor, *supra* note 37; Autor & Dorn, *Low Skill Service Jobs*, *supra* note 37; Autor, *Job Opportunities*, *supra* note 37.

48 There is a large body of literature concerning the relationship between education and income. See, e.g., Claudia Goldin & Lawrence F. Katz, *The Future of Inequality: The Other Reason Education Matters so Much*, THE MILKEN INST. REV. 28 (2009), www.milkeninstitute.org/publications/review/2009_7/26-33mr43.pdf; Donald R. Deere & Jelena Vesovic, *Educational Wage Premiums and the U.S. Income Distribution: A Survey*, in HANDBOOK OF THE ECONOMICS OF EDUCATION 255 (Eric A. Hanushek & Finis Welch eds., 2006).

wages of high school graduates.⁴⁹ The gap between high school dropouts and college graduates is greater still.

The economic decline of men diminishes their appeal in the eyes of women. It has long been the case that a man's value in the marriage market depends on his income potential. Although the view that a husband's role is to support the family is less universal now than it was decades ago, it is still widely held. A 2010 poll by the Pew Research Center finds that more than two-thirds of Americans think that a man who is about to marry should be able to support his family, while only one-third think the same about a woman.⁵⁰

Black men have suffered even more than men of other groups, primarily due to their lagging educational performance. About fifty percent of black boys drop out of high school.⁵¹ Only half as many black boys as girls graduate from college.⁵² Those men who do not pursue education beyond high school, or do not graduate from high school, enter a labor market that disfavors blue-collar men.⁵³ Entering a labor market that has no place for them, unprecedented numbers of black men end up in jail.⁵⁴ More than ten percent of black men in

49 See Acemoglu & Autor, *supra* note 37, at 7. The authors' analysis of national data suggests that the "earnings of the average college graduate in 2008 were 1.97 times those of the average high school graduate." *Id.*

50 Fry & Cohn, *supra* note 2.

51 SCHOTT FOUND. FOR PUB. EDUC., YES WE CAN: THE SCHOTT 50 STATE REPORT ON PUBLIC EDUCATION AND BLACK MALES 2010 6 (2010), <http://schottfoundation.org/publications/schott-2010-black-male-report.pdf>.

52 Jessica W. Davis & Kurt J. Bauman, *School Enrollment in the United States: 2006: Population Characteristics*, U.S. CENSUS BUREAU (2008), <http://www.census.gov/prod/2008pubs/p20-559.pdf>.

53 See generally Autor, *Job Opportunities*, *supra* note 37; Mankiw, *supra* note 38.

54 See generally IMPRISONING AMERICA: THE SOCIAL EFFECTS OF MASS INCARCERATION (Mary Patillo, David Weiman, & Bruce Western eds., 2004); Heather C. West & William J. Sabol, *Prison Inmates at Midyear 2008*

their twenties and early thirties are in prison or in jail.⁵⁵ African Americans are less likely to marry than any other group in part because African Americans are more likely to be economically disadvantaged. But that is not the entire story of the black marriage decline. At every level of income or education, African Americans are less likely than their white counterparts to marry. Even affluent, college-educated African Americans are less likely to be married than their white counterparts. Why?

III. GENDER INEQUALITY AMONG AFRICAN AMERICANS

The severity of the African American marriage decline is in part a result of gender inequality. One part of the story is that so many more black women than black men have fared well economically that even those black women who are economically stable and who would like to find a partner have trouble doing so. So severe has been black men's educational failure, economic disadvantage, and incarceration rate that black women at all levels of education and income have difficulty finding a suitable partner.⁵⁶

The question then becomes why even affluent and college-educated black men are less likely than their white counterparts to marry. While marriage rates generally increase with socioeconomic status, black men who earn more than \$100,000 a year are actually less likely to marry than their lower earning but economically stable counterparts.

– *Statistical Tables*, U.S. DEP'T OF JUST. BUREAU OF JUST. STAT. 17 (2009),
<http://bjs.ojp.usdoj.gov/content/pub/pdf/pim08st.pdf>.

⁵⁵ See West & Sabol, *supra* note 54, at 18.

⁵⁶ More than one in ten black men in their twenties and early thirties (prime marrying years) are behind bars.
Id.

One explanation for this pattern is that the scarcity of economically stable black men lessens their likelihood of marrying by increasing their power in intimate relationships with black women. Intimate relationships may entail love and affection, but they also depend on power. Relationships form within a market, and within that market, scarcity is a source of power. Whichever group is in short supply will have the upper hand because each member of that group will have more romantic options outside of any particular relationship. The more power a person has outside of a relationship, the more power they have within it. With nearly twice as many black women as black men who graduate college each year, college-educated black men are scarce and, put simply, have many more relationship options than do their female counterparts. If men are less inclined than women toward marriage, it is unsurprising that for African American men, disproportionate relationship power would translate into lower marriage rates.

The paradoxical result is that even those black women who have excelled find themselves disadvantaged in their relationships with black men. The gender imbalance in relationship power further contributes to the precipitous decline in marriage among African Americans.

CONCLUSION

These changes in family patterns present challenges that our society must address. The first step, to which I have tried to contribute, is to understand what has happened, and why. These problems are easier to describe than to resolve. While some commentators

conclude that the government should actively promote marriage, my own preference is for policies that ease the economic burdens that make marriage so challenging and that make the absence of married parents potentially disastrous for children. We would do well for our government to invest more in children. That is one essential step toward arresting the growing inequality that if left unchecked will perpetuate itself from one generation to the next.