Introduction

Marsha Garrison and Elizabeth S. Scott

Today, marriage is at a crossroads. Across the industrialized world, young adults are marrying later and increasing numbers may not marry at all. Married couples, for several decades now, have also faced a relatively high probability that their relationships will terminate in divorce. These changes have affected children as well as adults. The proportion of children born outside of marriage has grown dramatically, and children born within marriage face an increased risk of parental divorce or separation. Moreover, marriage itself has changed in important ways, from a lifelong institutional union to a companionate relationship, the strength and duration of which are determined by the individual preferences of the parties. Public attitudes toward these trends are generally accepting; a majority of Americans in a recent survey were positive or neutral about couples (including gay couples) living together and having and raising children outside of marriage.

Interestingly, as traditional marriage has declined, the movement to extend the right to marry to same-sex couples has acquired substantial momentum and become an important focus for advocates in the gay and lesbian community. A number of nations and several American states have legalized same-sex marriage; others have created an alternate status that confers some or all of the rights and obligations of marriage. This issue has generated controversy. Those who favor extending marriage to same-sex couples see marriage as a core social status, access to which is an essential aspect of full membership in society. Social conservatives who favor an alternate status – or no status at all – agree that marriage is a core social institution, but argue that extending access to same-sex couples will irreparably weaken marriage. At the same time, some gay and lesbian advocates argue that marriage is a gendered and outmoded institution and that the gay community should not make the right to marry a key political goal.

Controversy has also surrounded the decline of opposite-sex marriage. Some commentators have argued that the decline of marriage is a troubling social problem, while others see the trend as nothing more than a sign of the growing irrelevance of an

obsolete institution. Some who see a problem view the changes as evidence of moral decline, while others focus on the relative instability of nonmarital cohabitation as compared to marriage (and of remarriage as compared to first marriage). Family stability is associated with a range of benefits to children and instability with a range of risks. And both the risk of parental breakup and the number of different family arrangements that children experience as they grow to adulthood has skyrocketed. Moreover, particularly in the United States, a growing class divide in marriage and family life may exacerbate socioeconomic disadvantage. Less educated and lower-income individuals are far more likely to have children outside of marriage than those who have more education and higher incomes. Indeed, as Sara McLanahan and Irv Garfinkel suggest in this volume, Murphy Brown, the target of condemnation by Vice President Quayle in the 1980s, is a myth; only very small percentage of college-educated professional women have children outside of marriage.

While the association between marriage and relational stability is clear, whether marriage itself contributes to that stability has been less obvious. It could be that couples who do not marry have preexisting characteristics that would produce relational instability whether or not their relationships are formalized through marriage. And even if marriage plays a causal role in promoting family stability, it is not obvious how policy makers should respond. Should government actively promote marriage and marital childbearing? Or should government extend the public benefits and private rights that now accompany marital status to couples that have not married?

No consensus has yet emerged about the appropriate legal and policy response to these important changes in family structure. Policy makers in the United States, both at the national and state levels, thus far have tended to favor retaining the traditional pro-marriage approach, offering benefits and privileges to married couples that are not available to other families. Other marriage promotion policies have been favored as well. The 1996 federal welfare-reform legislation that provided incentives to the states to increase two-parent families and reduce nonmarital childbearing was based on an underlying marriage-promotion policy. More recently, the George W. Bush administration launched an initiative designed to support "healthy" marriages through relationship-skills education and the reduction of tax and benefit "penalties" that might deter marriage. Many states have also launched their own marriage-promotion initiatives. Outside the United States, however, marriage promotion has been much more controversial, and policy makers have sometimes rejected laws that treat marriage more favorably than other family relationships. For example, the Canadian Parliament has revised both tax and old-age pension laws so that the same standards apply to married and "common-law" partners. Canada is far from unique. Several nations have extended some or all of the entitlements available to divorcing marriage partners to one or more groups of unmarried couples: Some countries have established an alternate status available to same-sex couples, heterosexual couples, or both, through registration. Others schemes are conscriptive; the couple's rights and obligations at separation are determined retrospectively through fact-based analysis.

For example, New Zealand has extended *all* of the personal rights and obligations of marriage to couples who have been "de facto partners" for three years.

This volume, authored by social scientists and family law scholars, explores alternative policy paths forward at this critical juncture. Debates about marriage and family policy have often been ideological and political; the volume captures the complexity of the debates through contributions by authors with widely varying perspectives. But the book also aims to inform the debates by situating them within an interdisciplinary framework grounded in social science research. This approach reflects our belief that, although family policy is – and should be – influenced by social and political values, it should also be shaped by empirical evidence. Over the past generation, social scientists have produced a large body of research that has contributed in important ways to our understanding of family formation and functioning. Family law and policy informed by this research evidence (some produced by contributors to this volume) can more effectively support families in fulfilling their important functions of caring for children and other dependents. Empirically grounded analysis also offers a neutral lens that, by enhancing understanding, may sometimes even produce consensus across ideological divides.

Part I of this volume offers historical background on marriage and its regulation, as well as demographic and cross-national perspectives on changes in marriage and in family structure. In Chapter 1, legal scholars June Carbone and Naomi Cahn explore "blue" (liberal, egalitarian) and "red" (traditional, culturally conservative) patterns of family formation and dissolution to inform and enrich our understanding of recent trends, including the growing class divide in marriage behavior in the United States. They identify the cultural and demographic roots of these divergent patterns and chart their comparative advantages and policy implications. Sociologist Arland Thornton (Chapter 2) analyzes the impact on family life in the developing world of "developmental idealism," namely the Western European insistence that consent, equality, and freedom are fundamental human rights. He describes a pattern of resistance, modification, and hybridization across a range of cultures and offers some predictions as to how these cultural clashes will develop and be resolved in the future. In Chapter 3, Margaret Brinig, an economist and legal scholar, describes the economic model of marriage and uses it to explore changes in the allocation of household labor in marital and nonmarital households. Using data from several waves of the National Survey of Families and Households, she charts shifts in household labor patterns and relates them to the economic model of marriage. Rebecca Probert, a legal historian and legal scholar from the United Kingdom, in Chapter 4 describes current demographic and legal trends in the United Kingdom and continental Europe, focusing specifically on cohabitation, marriage, and divorce. She describes both variation within Europe and the ways in which the general European pattern differs from that evident in the United States. In Chapter 5, Katherine Franke, a legal scholar, offers an historical perspective on today's same-sex marriage movement by comparing the experience of African-American freedmen

who first obtained the right to marry in the immediate post–Civil War era. She asks why the right to marry, rather than employment rights, educational opportunity, or political participation, emerged for both groups as the preeminent vehicle for gaining equality and dignity and suggests, based on the experience of the freedmen, how marriage rights can also constrain freedom.

Part II focuses on research by contributors (mostly social scientists) on family change and the public's response to that change. Several chapters in this part examine the impact of marriage and other family forms on adult partners and their children, illuminating the economic, social, and psychological links between family form and the well-being of family members. Paul R. Amato (Chapter 6) explores the evolution of marriage, describing three types of marriage that can be observed in contemporary society: traditional institutional marriage, companionate marriage, and individualistic marriage. He then compares the three types and finds companionate marriage to be associated with greater marital satisfaction and stability than the others. Robert E. Emery, Erin Horn, and Christopher Beam in Chapter 7 investigate whether the association between marriage and various health and happiness benefits results from marital status or from individual characteristics by comparing the marital histories and experiences with clinical depression of fraternal and identical twins who share childhood experience and some or all of their genes. They report that their data support the proposition that the marital benefit is not an artifact of selection. In Chapter 8, using data from the Fragile Families and Child Well-Being Study, a major longitudinal research project in the United States, Sara McLanahan and Irwin Garfinkel examine the causes and consequences of increased rates of cohabitation and nonmarital birth; they also offer policy recommendations, ranging from reduced incarceration to tax strategies, to increase the likelihood that children will grow up in stable families and minimize the harms associated with instability if it cannot be avoided. Finally, in Chapter 9, Ira Mark Ellman and Sanford L. Braver – a legal scholar and a psychologist, respectively – probe public attitudes toward family change and family obligations. They present survey evidence on public attitudes toward marriage as reflected in decisions about post-separation support and property division. They report that marriage plays a role in public attitudes toward these obligations, but not a determinative role.

Part III focuses on important contemporary policy debates, with several authors probing the legal implications of the recent changes in marriage and family life. In Chapter 10, Judith Stacey, a sociologist, draws on her ethnographic research on families around the world to illustrate that a wide range of relationships can fulfill the important child-rearing and social support functions of families. She argues that formal, state-sanctioned marriage inappropriately privileges some families over others and proposes abolishing marriage as a legal status. Suzanne B. Goldberg (Chapter 11) and Carl E. Schneider (Chapter 12), both legal scholars, explore the debate over extending the right to marry to same-sex couples. Goldberg probes the arguments advanced by gay advocates for and against making the right to marry a high political

priority. She endorses the view that marriage rights are important for their tangible benefits and as a powerful statement of social equality. But Goldberg rejects the contemporary relevance of the claim that allowing access to marriage for gay couples has the potential to transform marriage, suggesting that modern legal marriage is already based on equality norms. Schneider describes the declining role of morality in public discourse about marriage and family and analyzes the implications of this rhetorical shift on the debate over same-sex marriage. He considers whether same-sex marriage would serve the classic marital socializing function for gays and lesbians, as some gay advocates have argued, and how it would affect that function for heterosexuals. In contrast to Stacey, Shahar Lifshitz (Chapter 13), a legal scholar, argues against the abolition of formal marriage (what he calls the "private-neutral" approach), but also rejects the "public-channeling" approach that favors continuing to make marriage the only means of formalizing an intimate relationship. Instead, Lifshitz proposes a "pluralist" approach under which the state would make available to couples in intimate partnerships a range of legal-status options. This approach, Lifshitz argues, is the best means of protecting the key values of pluralism and autonomy and accommodating the important public and private interests at stake in designing family-status institutions.

The book concludes with two comments. In Chapter 14, sociologist Andrew Cherlin summarizes and reflects on the various contributions to this volume. We follow Cherlin's comment in Chapter 15 with an analysis of the evidence provided by the contributors, probing the policy implications and offering some tentative recommendations.

A generation from now, marriage and childbearing may seem quite different than they do today. Will marriage be less or more important as a family form? Will lawmakers have increased or reduced government support for marriage? Will couples who cannot marry today have gained access to marriage? Will formal marriage alternatives have expanded? Will some or all of those who do not marry be treated like those who do marry? The interdisciplinary approach offered by this volume provides tools to analyze and, hopefully, assist in resolving these policy questions about marriage at a critical juncture.

PART I

History, Demographics, and Economics – Multiple Perspectives on Families

1

Red v. Blue Marriage

June Carbone and Naomi Cahn

Marriage has long been a symbol of union – a union between husband and wife, a compact between the couple and the community concerning support for children, and an institution that, even as it changed or cloaked inconvenient facts about sexuality or paternity, forged shared meanings about family life. Today, however, marriage has increasingly become a symbol of disunion.

The disunion involves divorce and the disappearance of permanence as a defining feature of marriage. It extends to a dramatic increase in nonmarital births, as marriage has become an optional rather than mandatory aspect of child-rearing. And, in the United States today, marriage is increasingly a symbol of what divides us: regionally, economically, racially, politically, and ideologically.

These disagreements over the meaning and future of marriage start with fundamental changes in the role of marriage in ordering family life and extend to profound divisions about how to respond. Marriage "as we knew it" in the halcyon days of the 1950s was a product of two periods that have now passed: the industrial era that separated home and market and its final iteration in the relatively brief period at the end of World War II when the United States dominated world manufacturing. The nineteenth-century industrial era had moved the productive activities formerly associated with farm and shop, food and clothing production, out of the home. In response, the middle class promoted a new ideal that changed the couples' relationship from a hierarchical one that subordinated wife to husband to a more companionate and complementary one. In accordance with this ideal, the wage-earner husband handled the impersonal world of the market while the wife oversaw a redefined domestic realm whose principal purpose became the moral and educational instruction of children (Carbone 2000). While the middle-class model had long set the standards by which others were to be judged, it reached its height during the prosperous 1950s, a period in which a larger part of society could realize the advantages of stay-at-home moms in the nuclear families of newly constructed suburbs.

As the industrial era gave way to the information economy, the new economy remade women's roles, eliminated the highly paid jobs once available for less skilled men, and challenged the ideology of the family of the separate spheres. The information economy has simultaneously increased the demand for women's labor in the workforce and created labor-saving devices (and McDonald's) that reduced the amount of time devoted to the home (Carbone 2000). Perhaps as fundamentally, the birth control pill and abortion have remade the terms of sexual engagement: early marriage is no longer necessary to contain the consequences of women's sexuality. These changes have, in turn, transformed family life (Cahn and Carbone 2010; Goldin and Katz 2002; Hymowitz 2011).

Investment in women's income potential now pays off, and the new economy, while continuing to generate high-paying jobs for the most successful men, has increased income inequality for the country as a whole and has increased women's overall opportunities more than men's. With greater opportunities for the best-educated, the age of marriage has risen and, with it, the stigma of nonmarital sexuality has waned (Carbone 2000). In addition, as women enjoy more autonomy, they have greater ability to determine which relationships to embrace, which to leave, and which partners, if any, to include in rearing children. Within this context, marriage becomes a choice that can be redefined to express individual preferences or changing expectations about family roles.

In the midst of the transition, however, marriage no longer necessarily rests on shared experiences and understandings. The divisions start with geography. The age of marriage has increased everywhere, but it has increased most dramatically in the wealthiest and most liberal parts of the country (Cahn and Carbone 2010). The increase in the age of marriage also corresponds to a dramatic drop in teen births, decreases in fertility, and greater commitment to controlling childbirth through contraception and abortion. Birth rates in the Northeast resemble those in Northern Europe (at 1.8 in Massachusetts and Connecticut, they are below replacement) while remaining much higher in Utah, the South, and Southwest because of a combination of immigration, much younger average ages of marriage, and lesser access to contraception and abortion (Cahn and Carbone 2010).

The divergences increase with consideration of race and class. The most recent statistics show that both marriage and divorce have declined (Wilcox 2010). In fact, the average figures cloak dramatic differences for the college-educated middle class and what used to be the more marriage-oriented working class. The decline in marriage rates has been far more precipitous for those without a college education. And marriage has effectively disappeared in some communities; 96 percent of children born to African-American high school dropouts, for example, are born outside of marriage. At the same time, the divorce rates for college graduates have steadily declined since the late 1970s, returning to the levels of the mid-1960s (Wilcox 2010; McLanahan 2004). Yet, they continued to climb for everyone else, slowed only by the Great Recession (Wilcox 2010). In addition, while college graduates marry later than