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978-1-107-01827-3 - Marriage at the Crossroads: Law, Policy, and the Brave New World of Twenty-First-Century Families

Edited by Marsha Garrison and Elizabeth S. Scott

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## MARRIAGE AT THE CROSSROADS

The institution of marriage is at a crossroads. Across most of the industrialized world, unmarried cohabitation and nonmarital births have skyrocketed while marriage rates are at record lows. These trends mask a new, idealized vision of marriage as a marker of success as well as a growing class divide in childbearing behavior: the children of better-educated, wealthier individuals continue to be born into relatively stable marital unions while the children of less-educated, poorer individuals are increasingly born and raised in more fragile, nonmarital households. Meanwhile, growing numbers of same-sex couples seek access to marriage as an important political and personal goal.

These trends have generated political controversy and pose a number of challenges for policy makers: Should access to marriage be extended? Should lawmakers increase or reduce government support for marriage? And, with marriage rates declining, what policies will best support families in their important function of caring for children? The interdisciplinary approach offered by this edited volume provides tools to inform the debate and to assist policy makers in resolving these questions at a critical juncture. Drawing on the expertise of social scientists and legal scholars, the book will be a key text for anyone who seeks to understand marriage as a social institution and to evaluate proposals for marriage reform.

Marsha Garrison is the Suzanne J. and Norman Miles Professor of Law at Brooklyn Law School and Secretary-General of the International Society of Family Law. She is the coauthor of *Family Law: Cases, Comments, and Questions* (with Harry Krause, Linda Elrod, & Tom Oldham 1998, 2003, 2007) and *Law and Bioethics: Individual Autonomy and Social Regulation* (with Carl E. Schneider 2003, 2009).

Elizabeth S. Scott is the Harold R. Medina Professor of Law at Columbia University School of Law. She is the coauthor of *Rethinking Juvenile Justice* (with Laurence Steinberg, 2008), which received the 2010 Society for Research in Adolescence award for the best social policy book.

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# Marriage at the Crossroads

LAW, POLICY, AND THE BRAVE NEW WORLD  
OF TWENTY-FIRST-CENTURY FAMILIES

Edited by

**MARSHA GARRISON**

Brooklyn Law School

**ELIZABETH S. SCOTT**

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*Report*, *Kiplinger's*, *Redbook*, *New York Times*, *USA Today*, and *The Wall Street Journal* and was featured in a segment of ABC News' 20/20.

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**Ira Mark Ellman**’s principal scholarly interests are in family law and the use of social science in policy making by legislatures and courts. He served as Chief Reporter of the Principles of the Law of Family Dissolution, published in 2002 by the American Law Institute, and is the senior author of a leading text on family law used at more than forty law schools. Among his current projects are an empirical investigation into how people make judgments about the level of child support payments they believe the law should require an absent parent to pay and a book about the difficulties inherent in making family law policy. Professor Ellman is an affiliate faculty member of the Center for Child and Youth Policy at the University of California at Berkeley and an official Observer on the Drafting Committee for the Commissioners on Uniform State Laws that is considering revisions to the Uniform Premarital Agreement Act. Following graduation from law school, Professor Ellman served as a law clerk for Justice William O. Douglas of the U.S. Supreme Court. He has been a member of the faculty at Arizona State University Law School since 1978. He has visited for a semester or more at the Hastings College of Law, Brooklyn Law School, the Institute for Social and Policy Studies at Yale University, and both the Earl Warren Institute and the Center for the Study of Law and Society at U.C. Berkeley. In the fall of 2010, he was a Visiting Fellow at Trinity College, University of Cambridge.

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relationships and children's mental health, including parental conflict, divorce, mediation, child custody, family violence, and associated legal and policy issues. He has authored more than 125 scientific publications and several books including *Marriage, Divorce, and Children's Adjustment*; *Renegotiating Family Relationships: Divorce, Child Custody, and Mediation*; and his guide for parents, *The Truth about Children and Divorce: Dealing with the Emotions So You and Your Children Can Thrive*. He is the coauthor of *Abnormal Psychology*, with Thomas Oltmanns. Dr. Emery has discussed his work on the *Today Show*, *Good Morning America*, *The Jane Pauley Show*, and *National Public Radio*; in *Newsweek* and *Time* magazines; and in many other print and electronic media. In addition to his research, teaching, and administrative responsibilities, Dr. Emery maintains a limited practice as a clinical psychologist and divorce mediator.

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**Carl E. Schneider** is the Chauncey Stillman Professor for Ethics, Morality, and the Practice of Law and is a Professor of Internal Medicine at the University of Michigan. He was educated at Harvard College and the University of Michigan Law School, where he was Editor in Chief of the *Michigan Law Review*. He served as law clerk to Judge Carl McGowan of the U.S. Court of Appeals for the District of Columbia Circuit and to Justice Potter Stewart of the U.S. Supreme Court. He became a member of the Law School faculty in 1981 and of the Medical School faculty in 1998. Professor Schneider has written extensively in several fields, including bioethics, professional ethics, professional education, family law, and constitutional law. Schneider is the author of *The Practice of Autonomy: Patients, Doctors, and*

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*Medical Decisions* (1998), which examines how power to make medical decisions is and should be divided between doctors and patients and analyzes the role of autonomy in American culture. As one reviewer said of the book, it uncovers a “great hole . . . for all to see: the failure of autonomy not only as reality but even as ideal law.” He is also the author of two casebooks: *The Law of Bioethics: Individual Autonomy and Social Regulation*, with Marsha Garrison, and *An Invitation to Family Law* (2006), with Margaret Brinig.

**Elizabeth S. Scott** is the Harold R. Medina Professor of Law at Columbia Law School. Her areas of scholarly interest are family and juvenile law, and she has published extensively in legal and social science journals on marriage, divorce, child custody, adolescent decision making, and the legal regulation of juvenile crime. Much of her research is interdisciplinary, applying social science research, developmental theory, and behavioral economics to legal policy issues involving children and families. With Laurence Steinberg, she is the author of *Rethinking Juvenile Justice* (2010), which received the 2010 Society for Research in Adolescence award for the best social policy book. Professor Scott is also the coauthor of two widely used casebooks in Family Law and Children in the Legal System. Scott was a member of a John D. and Catherine T. MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice, an interdisciplinary research group that, over a ten-year period, conducted studies of adolescents’ competence to stand trial, desistance from criminal activity, and public attitudes toward youthful culpability. She was a founder and co-director of the Center for Children, Family and the Law at the University of Virginia, an interdisciplinary center that promotes research and informs policy makers and practitioners on issues relating to children and families. Scott has also served on numerous task forces and committees dealing with legal policy toward families.

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North African Studies, Center for Chinese Studies, the Weiser Center for Emerging Democracies, and the Center for South Asian Studies. Thornton is a social demographer with a long record of sponsored research and publication. He has served as president of the Population Association of America and currently holds a MERIT Award from the NIH. He has received four awards for his books as well as a Distinguished Career Award from the American Sociological Association. Thornton has contributed substantially to the understanding of intergenerational processes and forces affecting marriage, cohabitation, and living arrangements. This work has culminated in an award-winning 2007 book (with William Axinn and Yu Xie) titled *Marriage and Cohabitation*. He has also coedited a book on the role of ideational forces in international family change (Jayakody et al. 2008) and is currently directing a panel study in Nepal investigating the impact of ideational factors on marriage and fertility behaviors in that country. During the past decade, Thornton has devoted considerable time and energy to studying developmental idealism and its influence in many areas of the world. His 2001 presidential address to the Population Association of America focused on this topic, as does his award-winning book entitled *Reading History Sideways: The Fallacy and Enduring Impact of the Developmental Paradigm on Family Life* (2005). Of particular importance for Thornton's current work are the ways in which values, beliefs, and people have been and are being distributed around the world.

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## Acknowledgments

The idea for this book grew out of numerous conversations over lunch in a small restaurant in the West Village – about family law issues generally, and about the future of marriage at this interesting historic juncture. As family law experts who share a belief that social science research can inform the legal regulation of families, we thought that an edited volume on “marriage at the crossroads,” that brought together the leading social scientists studying families and leading family law experts could make an important contribution to the literature. We were delighted that virtually every scholar we invited to contribute to the book accepted our invitation, and we are extraordinarily grateful to all of our contributors for making this project such an amazing success. We are also grateful to the Columbia Law School and to the Henry Schneider Memorial Fund for funding a wonderful and productive conference that brought the authors together to present and discuss chapter drafts. The Columbia Center for Gender and Sexuality Law was a co-sponsor of the conference and Vina Tran provided invaluable assistance in its organization. We thank Dean David Schizer, of the Columbia Law School, and Interim Dean Michael Gerber, of Brooklyn Law School, for their enthusiasm about the project and for their financial support. We are grateful to our research assistant, David Berman, and to Peter Graham, who carefully organized the chapters into a coherent manuscript. Our Cambridge University Press editor, John Berger, was terrific; his enthusiasm for the book and guidance at critical points were invaluable. Finally, we are grateful to Shana Meyer who managed the production process with efficiency and good humor.

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