*Divorce Rates, Marriage Rates, and the Problematic Persistence of Traditional Marital Roles**

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Abstract

Recent legal developments have revived the debate over the impact of no-fault divorce laws on divorce rates. The irony is that this debate occurs in the midst of a twenty-year decline in American divorce rates that is the most sustained decline since the government began collecting such data in 1860. Perhaps of greater concern should be the accompanying decline in American marriage rates, which over this same time period has been dramatic. Today, children living with only one parent are nearly as likely to have parents who never married, as they are to have parents who divorced.

Part I of this paper briefly revisits the debate over divorce rates. It reviews earlier studies showing the law's limited impact on divorce rates, notes that work on this question must take account of regional variations in divorce rates unrelated to the law, and presents new data suggesting that these regional variations arise in part from regional differences in population mobility. It also argues that cultural factors, such as changes in women's employment, are more important than the law in explaining divorce trends. The rising ratio of women's earnings to men's has also been identified as a factor contributing to declining marriage rates. But the theoretical explanations for this connection assume a persistence in traditional gender roles in marriage. Part II, the main body of the paper, finds that both employment data and attitude surveys, domestic and international, in fact reveal a perhaps surprising persistence in this preference, thus supporting the inference that that improvement in women's relative economic position may be one factor contributing to declining marriage rates, at least in the short term. Apart from its implication for marriage rates, the persistence of gender roles independently suggests that traditional divorce law remedies for financially dependent spouses will retain their importance. Finally, the possibility of a long-term decline in marriage rates, for whatever reason, suggests that the law's treatment of nonmarital relationships will become increasingly important, and the likelihood that heterosexual cohabiting relationships will conform to traditional gender patterns suggests that financial remedies will be equally important at their dissolution.

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INTRODUCTION

As the 1990's drew to a close, two states adopted a form of optional fault divorce that its proponents called "covenant marriage".[1] The reformers' apparent premise was that the institution of marriage was threatened by high divorce rates that were a consequence, at least in part, of legal policies. Oddly enough, this renewed concern with divorce rates arose after nearly two decades during which divorce rates declined. These same two decades, however, also saw a significant decline in marriage rates. Perhaps, then, fault proponents are focusing on a problem of the past rather than the future. Their real worry might not be the high proportion of marriages ending in divorce, but the low rate at which marriages form in the first place.

I have explained elsewhere why I believe a return to fault divorce is far more likely to increase the frequency of injustice than to reduce the frequency of marital dissolution.[2] The evidence certainly offers little reason to believe that divorce rates are much affected by divorce laws. The same may prove true about the law's impact on marriage formation. In that case, it doesn't much matter if fault reformers are aiming at the wrong target, for in either case they have nothing to shoot but blanks.

But even if the law cannot affect the rate at which people marry or divorce, changes in those rates may affect the law. The increase in divorce rates made the law of divorce

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1. The two states are Louisiana and Arizona. La.Rev.Code § 9-224 et seq.; Ariz.Rev.Stat. 25-901 et seq.

2. Ira Ellman, *The Misguided Movement to Revive Fault Divorce*, 11 International Journal of Law, Policy and The Family (Oxford) 216 (1997); Ira Ellman and Sharon Lorh, *Dissolving the Relationship Between Divorce Law and Divorce Rates*, 18 International Review of Law and Economics (Berkeley) 341 (1998).

important to a far greater share of the population, and influenced the no-fault reforms that followed it. The decline in marriage rates was accompanied by an increase in the non-marital births, which raises a host a legal issues. It has also been accompanied by a rise in nonmarital cohabitation. In 1970 there was one unmarried-couple household for each 100 married-couple households, but by 1994 there were seven for each hundred.[3] In the United States, heterosexual nonmarital cohabitation has been mostly a transitional rather than long-term phenomenon, with most couples either marrying or breaking up within a few years.[4] In some European countries, however, the shift from married to unmarried cohabitation has gone much further, with many more couples in long-term relationships remaining unmarried.[5] Exploring the evidence on the factors associated with marriage and divorce rates may allow us to see not only where we have been, but also where we are going, and how the may need to respond to it.

I begin by briefly reviewing the evidence, presented fully elsewhere, on the impact of the law on divorce rates. I then examine two non-legal variables associated with the likelihood of divorce, regional effects and on the increasing participation of wives in the workforce. The second and main part of the paper then explores the connection between women's workforce participation, marriage rates, and traditional marital roles. I conclude that women's improved economic position, relative to men, may indeed contribute to

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3. Bureau of the Census, Current Population Reports, Series P-20-484, MARITAL STATUS AND LIVING ARRANGEMENTS: MARCH 1994 (1996), Table A-9.

4. See the sources described in IRA MARK ELLMAN, PAUL KURTZ, AND ELIZABETH SCOTT, FAMILY LAW: CASES, TEXT, PROBLEMS 930-31 (3d ed., 1998).

5. See the discussion of the Swedish experience, *infra* at _____.

declining marriage rates, but only because of the surprising persistence of traditional marital roles. This persistence in Americans' adherence to traditional marital roles is itself relevant to policy choices governing the law of divorce and cohabitation.

I. Divorce

The timing of the revived debate on no-fault divorce was perhaps curious, taking place as it did after two decades during which divorce rates largely remained stable or declined. Indeed, the historical pattern in divorce rate trends is the most persuasive evidence we have for why the law was not itself a major factor in causing either the increase in divorce rates earlier in the century, or their more recent decline. The basic point is well communicated by pictures showing a careful state-by-state comparison of the temporal relationship between changes in the divorce law, and divorce rates. These pictures show little evidence of any long-term effect of the legal change. Sharon Lohr and I have elsewhere provided a comprehensive examination of that kind.[6] Figure 1, borrowed from that study, shows divorce rates trends in three states of the southern Mountain region of the U.S.

6. Ellman and Lohr, *Dissolving the Relationship Between Divorce Laws and Divorce Rates*, 18 Inter'l Rev. L. & Econ. 341.

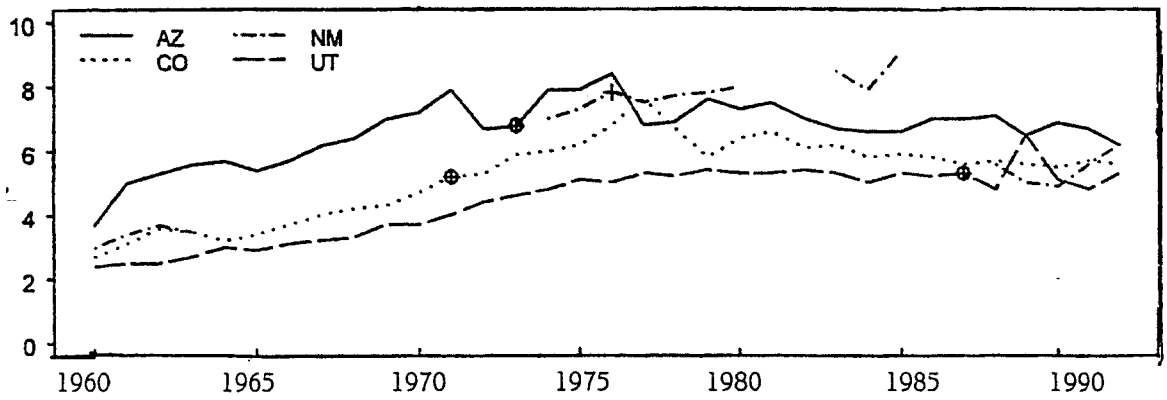

Figure 1

Divorce Rates, in divorces per 1000 population, for three states, 1960 to 1992 (plus partial data for New Mexico, for which other data is missing). For the three states with complete data, the circle with the cross inside it marks the date of enactment of a law which added irremediable breakdown as grounds for divorce and adopted property and alimony rules that excluded consideration of fault.

One can see that in all the states, the divorce rate began climbing long before no-fault divorce was adopted, and that no durable acceleration in the rate of increase followed its adoption. The point is made most clearly by the Colorado data, which shows no visible change in divorce rates around the time of no-fault's adoption. In Arizona, the divorce rate, which had been rising, declined immediately before adoption, then resumed its increase afterward–but only for three or four years, after which it again declined. This pattern is what one would expect from a legal reform that made divorce easier and quicker to obtain, but which had no fundamental impact on its likelihood. Once the prospect of divorce law reforms seemed secure, some parties planning to divorce would delay filing to avoid the more cumbersome fault law, thus reducing divorce rates temporarily in the period just before the new law becomes effective. After its effective date, there would be a corresponding short term increase in rates, as these deferred divorces were added to the backlog of divorce petitions already the pipeline, and an additional short-term increase if no-fault speeded up

the pipeline's flow. The overall result is a transitory rate increase following enactment, followed by a resumption of the basic trends. This pattern is in fact common, and also appears to be what happened after Utah's more recent adoption of no-fault. The general pattern shown by these three states is typical--nationally, divorce rates have been stable or declining since 1981--and is very difficult to reconcile with any claim that no-fault caused any important increase in divorce rates.[7]

If one hypothesis is that changes in divorce laws cause changes in divorce rates, a

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7. Similar chart on all the states is provided in Ellman and Lohr, which also corrects the date to exclude regional effects on divorce rates. Such regional influences are very great, as explained in more detail later in this paper. Because there are also regional patterns in divorce *laws*, a careful examination of the impact on rates of a state's adoption of no-fault requires some kind of control for these regional effects. One approach is to look at a state's residual changes in divorce rates over time, after removing the average changes of the other states in its region, over the same time period. Examination of the data after such an adjustment confirms the point in the text. See Ellman and Lohr, *Dissolving the Relationship Between Divorce Laws and Divorce Rates*, 18 Inter'l Rev. L. & Econ. 341 (1998).

An article appearing after Ellman and Lohr claims to find a relationship between no-fault divorce laws and divorce rates, Friedberg, *Did Unilateral Divorce Raise Divorce Rates?*, 88 American Economic Review 608 (1998). Friedberg relies on Brinig's compilation of the year in which the states adopted no-fault divorce. In several cases we used different years, believing Brinig to be incorrect, (see Ellman and Lohr), but it is not obvious that this difference alone would explain the different results. A more likely explanation is a combined effect of two other differences between her methodology and ours. If one posits that no-fault divorce was the result, not the cause, of rising divorce rates, one would expect a pattern in which each state's shift to no-fault occurs some years after divorce rates in that state begin to rise steeply. That is in fact the pattern that Lohr and I found. But we looked at the divorce rates between 1960 and 1992, while Friedberg examines the period 1968 to 1988. Her truncated time series excludes for many states a period during the 1960's that preceded any legal change but which included steeply rising divorce rates. She might therefore overestimate the impact of no-fault in the early-adopting states. This possible problem could be exacerbated by her method for correcting for the non-legal factors that affect divorce rates over time. She finds a significant association of divorce rates with no-fault divorce only if she includes in her regression a term that corrects for state-specific trends in divorce laws. But if for each state the rates tend to rise steeply for some years before enactment of no-fault, and level out or decline within a few years after enactment (a pattern we found common), then correcting for each state with state-specific trends effectly excludes this real phenomenon from the analysis, thus biasing it against the competing claim that no-fault was the result rather than the cause of rising divorce rates. Nonetheless, some correction for trends over time is appropriate. We made the correction in a different way. Our assumption was that non-legal factors affecting divorce rates trends, such as social or demographic changes, would be relatively homogenous within regions, so that for each state the average of the other states within its region could provide a basis for the correction that was not affected by date at which that particular state changed its law. For this purpose we divided the country into ten regions. Our method may also have its drawbacks, and we do not claim certainty on the best approach to this problem. Friedberg's truncated time series may alone explain the her results, however. Professor Lohr ran Friedberg's model (including her correction for state-specific effects), extending the time series back to 1960 and forward to 1992. She also used our dates, rather than Brinig's, for the year in which each state adopted no-fault. The resulting coefficient for no-fault was not significant.

competing hypothesis is that changes in divorce rates cause changes in divorce laws. Classic fault divorce rules assumed an adversary proceeding in which an innocent spouse sought a divorce from a guilty one.[8] The rules required parties to tell the court a story about their marriage that satisfied the fault grounds contained in the applicable law. The spouses' agreement to divorce was not sufficient, and could be disqualifying because it suggested collusion between them in fabricating a story for the court. The story's required elements depended upon the range of marital misconduct recognized as grounds for divorce under local law, but compliance often required parties who wanted their marriage dissolved to offer testimony that was awkward and embarrassing at least, or perjurious, at worst. Because most divorces were in fact uncontested–the parties having negotiated terms–the adversary format was usually a poor fit. Divorce lawyers spent a good part of their practice coaching the plaintiff spouse–typically chosen by both the parties, in an agreement never presented to the court–in giving testimony that contained the magic words needed to describe the other spouse's behavior in terms that met the particular jurisdiction's fault requirement. When divorce rates began a steep rise in the late 1960's, an increasing proportion of the population began experiencing this charade. More lawyer time was spent producing it, and more judge time was spent listening to it. In that way the rising divorce rate itself enlarged the constituency for divorce law reform. This understanding of what happened is quite consistent with a pattern in which divorce rates rise, no-fault reforms are enacted, and divorce rates continue to rise. That is, of course, the pattern one generally sees in examining the experiences of each state.

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8. For a fuller account of the material that follows, see Ira Ellman, Paul Kurtz, and Elizabeth Scott, FAMILY LAW: CASES, TEXT, PROBLEMS 191-198 (3rd ed., 1998), on which this summary relies.

Also compatible with this data is a third hypothesis, that increasing divorce rates and the no-fault reforms were both the product of changing cultural norms. A decline in the stigma of divorce encouraged a higher proportion of unhappy spouses to end their marriage, and also made proposals to ease access to divorce more palatable politically. Between 1968 and 1974, as the no-fault movement was just getting underway, the proportion of the population that told Gallup Poll interviewers that divorce should be easier to obtain rose by fifteen percentage points, while the percentage saying "more difficult" declined by 21 points.[9] In 1962, only 51 percent of young adult women told interviewers they believed that "divorce is usually the best solution when a couple can't seem to work out their marriage problems", but by 1977, 80 percent had that view.[10] Such changes in public attitudes cannot help but affect the likelihood of divorce as well as the likelihood of divorce law reform. Effects may also combine: cultural changes may affect divorce rates, and then the cultural changes and the increased divorced rates together make the political climate hospitable to divorce law reform. The cultural hypothesis also seems consistent with the resurgence of interest in restrictive divorce that we have seen in the last few years, because that interest has arisen *after* some years during which divorce rates have declined. That is, perhaps recent proposals for covenant marriage reflect the same changing cultural values that already caused divorce rates to fall by about fifteen percent between 1981 and today.

There seem to be many recent indicators of larger cultural change. Three separate surveys conclude that the proportion of teens who are sexually experienced declined in the

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9. Andrew Cherlin, MARRIAGE, DIVORCE, REMARRIAGE 46 (Rev. Ed., 1992).

10. *Id.* at 126.

1990's, reversing the increases from earlier decades.[11] In addition, contraceptive use is up among teenagers, especially use of condoms.[12] Teenage birth rates declined from 90 births per thousand in the late 1950's to 50.2 in 1986. While they then climbed back up to a new peak of 62.1 in 1991, they have again declined, reaching 52.9 in 1997.[13] Births to unmarried mothers increased despite the declining birth rate among teenagers, because the age at first marriage has climbed. But the most recent available data even shows a decline in the birth rate for unmarried women, from 1994 to 1995, and again from 1995 to 1996.[14] The birth rate for unmarried black women has actually been falling since 1989; the overall increase in the rate from 1989 to 1994 resulted from an increase in the lower unmarried birth rate among whites.[15] And of course crime rates in America have been falling dramatically. Rates derived from the National Crime Victimization Survey, conducted by the Justice Department, have now fallen to their lowest levels since the survey was begun in 1973, for both violent crimes and property crimes.[16] If these data indicate a culture generally on the

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11. As cited in footnotes 14, 15 and 16 of Ventura, et al., *Declines in Teenage Birth Rates, 1991-97: National and State Patterns*, National Vital Statistics Reports, Vol. 47, No. 12, National Center for Health Statistics, December 17, 1998.

12. See footnotes 14 through 17 of Ventura, id.

13. id.

14. The rate declined from 82.1 birth per 1000 unmarried women in 1994 to 75.9 in 1995 and 74.4 in 1996. Center for Disease Control, National Center for Health Statistics, Monthly Vital Statistics Report, Vol. 46, No. 11, Supplement, June 30, 1998, at Table 18.

15. The birth rate for unmarried black women peaked at 90.7 per 1000 in 1989; by 1996 it had declined to 74.4 per 1000. The rate for whites increased from 30.2 in 1989 to 38.3 in 1994, before declining to the next two years, to 37.6. Id.

16. The property crime rate is less than half the 1973 rate. Robbery rates fell 32 percent just between 1991 and 1997, while homicide rates fell 31 percent. The national data is taken from Decline of Violent Crimes Is Linked to Crack Market, New York Times, December 28, 1998, at A16. Homicide rates in New York City have now fallen below their levels in 1964, when the Beatles first appeared on the Ed Sullivan show. New York Times, December 24,

mend, then the declining divorce rates since the early 1980's fit right into the picture.

Cultural change is nonetheless an unsatisfying explanation for changes in divorce rates, or indeed for any phenomena. What, after all, do we mean by cultural change? If culture is simply a shorthand term for a particular constellation of average group behaviors or preferences, then explaining one of these behaviors as the product of culture is inherently circular. Nor does the casual observation of several apparently compatible trends show a real relationship. More interesting would be a tighter showing of a relationship between divorce rates and some other, particular, attribute. I will briefly explore two possibilies here, mobility and women's employment.

A. The Relationship of Mobility and Divorce

It has long been observed that divorce rates in the United States vary greatly by region. Divorce rates in the West have been higher than in every other region of the United States since national divorce statistics were first compiled in 1870. Divorce rates in the south, once lowest in the country, became second highest in 1940 and have remained there since:

1998, at A1.

Table One

Divorces per 1000 Inhabitants, by Region[17]

Year	Northeast	Midwest	South	West
1870	0.3	0.4	0.2	0.6
1890	0.3	0.7	0.4	1.2
1900	0.4	1.0	0.7	1.4
1916	0.5	1.4	1.1	2.1
1930	0.7	1.9	1.6	2.8
1940	0.9	2.0	2.3	3.7
1950	1.1	2.4	3.2	4.2
1960	0.9	2.1	2.8	3.4
1967	1.1	2.6	3.1	4.1
1978	3.4	4.9	5.7	6.4
1979	3.6	5.0	5.9	6.4
1980	3.5	5.0	6.0	6.3
1981	3.6	4.9	6.1	6.3
1982	3.7	4.6	5.7	6.0
1983	3.6	4.6	5.6	5.8
1984	3.6	4.4	5.5	5.6
1985	3.8	4.5	5.6	5.8
1986	3.6	4.4	5.5	5.6
1987	3.6	4.4	5.4	5.5
1988	3.5	4.5	5.4	5.3

The regional patterns can mislead those examining the relationship between the law and divorce rates. The West was the first region to adopt no-fault divorce and has in general remained its stronghold, tempting those who believe that no-fault yields increased divorced

17. Rates from 1870 through 1960 taken from Table 9 in *100 Years of Marriage and Divorce Statistics, United States, 1867-1967*, National Center for Health Statistics, Vital and Health Statistics Series 21, No. 24, Dept of Heath, Edu, and Welfare Publication No. (HRA) 74-1902 (1973). Rates from later years taken from the National Center for Health Statistics, *Vital Statistics of the United States, 1987*, Vol. III, Marriage and Divorce, DHS Pub. No. (PHS) 91:1103, and the equivalent reports issued annually in the preceding years and in 1988. Subsequent to 1988 the NCHS stopped reporting these statistics on a 4-region basis. It stopped compiling them altogether in 1990. From that time forward only provisional divorce statistics for each year are available on a state by state basis. Divorce statistics are apparently difficult to compile and the NCHS chose to save the costs of improving their collection. See the notice at 60 Fed.Reg. 64437-64438 (1995), also available at http://www.cdc.gov/nchswww/datah/datasite/frnotice.htm.

rates to cite Western states as evidence for their view. But the fact that the West has been the leader in divorce rates since regional statistics have been kept on the matter--in other words, since long before no-fault divorce was imagined–makes clear that the West's historically high divorce rates were not caused by no-fault laws.[18] That conclusion is strengthened by the post-1940 emergence of the South as a high divorce region, since the South has in general been the stronghold of fault divorce. What regional differences can one then examine to explain the differences in divorce rates? There are of course demographic differences in the regions, and so one might imagine, for example, that there is a relatively higher proportion of Catholics in the Northeast, as compared to the South and West, which might explain its lower divorce rates.[19]

But I wish to consider a difference between the West and other regions that I previously suggested might explain its higher divorce rates: the rate of in-migration. It seems almost certain that the West has always had a higher proportion of residents who have recently moved to their current home, than do other parts of the country. One also has the sense that immigration into the South, once relatively low, has been much higher in recent decades. Both intuited patterns seem to coincide with divorce trends. One can imagine reasons to expect such an association. Perhaps persons whose temperment makes them more

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18. What could be true is that the West's high divorce rates made it more receptive to no-fault reforms, or that cultural or demographic factors distinctive to the West that contribute to its high divorce rates also contribute to a political climate hospitable to no-fault divorce.

19. Although it appears that for Americans born after 1930, Catholic upbringing has no association with the likelihood of divorce, even though it did for Americans born before then. Sander, *Catholicism and Marriage in the United States*, 30 Demography 373 (1993). Interfaith marriages remains associated with a higher divorce rate, Lehrer and Chiswick, *Religion as a Determinant of Marital Stability*, 30 Demography 385 (1993), and perhaps they are more common in the West than in the Northeast--although one would not expect them to be more common in the South than in the Northeast.

willing to move across the country would also be more willing to leave a marriage. Or perhaps moving is itself associated with other factors, such as employment instability, that contribute to marital instability.[20] I have not sought data to test these particular hypotheses, and in any event available data could not show mobility is a *cause* of divorce (or vice versa). But whatever the reason for it, there is data suggesting an association between mobility and divorce, in the sense that divorce rates tend to be higher in regions that have previously experienced higher net in-migration.

An earlier article by Sharon Lohr and I constructed for each state a ratio of the number of in-migrants into a state between 1970 and 1980, divided by the 1970 population of the state, as an indicator of the proportion of the state's population that (in 1980) consisted of recent in-migrants. The Spearman correlation coefficient between that ratio, and a state's divorce rate (using the average of the annual rates from 1980 through 1985) is .76--a very high correlation for a social science statistic.[21] I offer here some additional evidence that seems to confirm this earlier finding.

Our earlier calculation used data from the decennial census. Another source of

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20. A third possibility, that those who move are disproportionately in an age range during which persons are also more likely to divorce, is probably wrong. In 1998, over 30% of adults in their twenties moved, while 22 % of those between 30 and 34 did so. The percentages drop considerably with increasing age, until one gets to persons older than 74. Bureau of the Census, Current Population Reports P20-520, March 1997 to March 1998, *Geographical Mobility* (January, 2000), at Table B. For those born between 1948 and 1950, the average age at divorce was 33.8, a decline of several years from the average age at divorce for those born between 1908 and 1912. Because the age at first marriage has steadily increased for birth cohorts after 1950, the age at divorce probably has as well. Cherlin, *supra*, at 68 (including note 5). It thus seems that those who move tend to be younger than those who divorce.

21. We originally reported this statistic in note 25 of *Dissolving the Relationship Between Divorce Rates and Divorce Laws*, 18 International Review of Law and Economics 341 (1998). Note that for this calculation, as for most calculations reported in that article, we omitted Louisiana and Nevada--the first because its data was incomplete, the second because it is an outlier in divorce statistics, its rates being affected by a large number of divorces granted to *de facto* nonresidents.

mobility data are annual surveys conducted by the Census, but the sample from any one state in any one year is too small to be sufficiently reliable. I therefore looked at data by region. Mobility data by region for five-year periods is available for the periods 1965-1970, 1970-1975, and 1975-1980. These data fortunately overlap with the period of greatest change in American divorce rates. One can calculate a fraction that consists of the number of in-migrants into each of the four regions during each of these five year periods, divided by the regional population at the beginning of the five year period.[22] This provides a relative measure, as between regions, of the proportion of the population, at the beginning of each five-year period in each region, that consists of recent in-migrants as compared with long-term residents. One can then calculate the Pearson correlation coefficient between this proportion for each region, and that region's average divorce rate over the five following years.[23] The scatterplot is shown in Figure 2. One must be cautious about this method. When one examines data that itself consists of averages, artificially high correlations normally result.[24] And the number of data points for each calculation is small. At the same time, the resulting correlations are very high: .98 between the new resident ratio for each region during 1965-1970, and the region's average divorce rate for 1971-1975, and of .94

22. By "in-migrant" I mean anyone who moved into the region, most of whom move in from another region, rather than from another country.

23. For performing these calculations particularly, I wish to thank Lynn Tobin.

24. This is known as the problem of "ecological correlations". See David Freedman, Robert Pisani, Roger Purves, and Ami Adhikari, STATISTICS 140-141 and A-7 (2d ed., 1991).

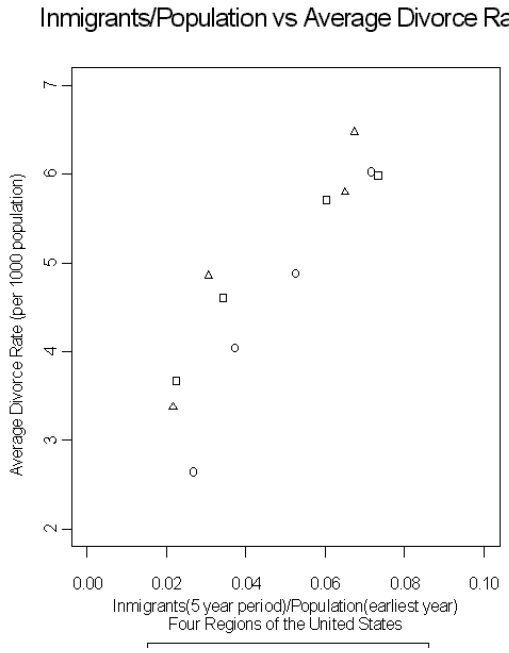

Figure 2
In-migrant Proportion of Population vs. Divorce Rate
1965-1970 vs. 1971-1975 in circles (r = .98)
1970-1975 vs. 1976-1980 in triangles (r = .94)
1976-1980 vs. 1981-1985 in squares (r = .98)

and .98 for the analogous data calculated for the two subsequent five-year periods.[25] This

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25. Five year migration totals, by region, were obtained from Table A, Interregional Migration: 1965-1970, 1970-75, and 1975-1980, at page 1 of Bureau of the Census, Current Population Reports, *Geographical Mobility: 1975 to 1980*, Series P-20, No. 368 (1981). The population by region for the relevant years was also taken from Census Bureau reports. Using these figures, I calculated the ratio of in-migrants during each five year period, over the population in the earliest year of that period, to be is as follows:

In-migrants(for the 5 yr period) / Population (first year of five year period)

Years	NE	Midwest	South	West
1965-1970	0.0268	0.0373	0.0527	0.0717
1970-1975	0.0216	0.0306	0.0650	0.0674
1975-1980	0.0225	0.0344	0.0604	0.0735

The average divorce rates for the relevant periods can be calculated from the data presented in Table One in the text, and are as follows:

Average Divorce Rate (per 1000 population)

Years	NE	Midwest	South	West
1971-1975	2.64	4.04	4.88	6.02
1976-1980	3.38	4.86	5.8	6.48
1981-1985	3.66	4.6	5.7	5.98

analysis thus adds a small bit of weight to the earlier finding in Ellman and Lohr.[26]

Finally, there are two more bits of seemingly confirming data. The first is historical. At one time the federal government calculated the percent of divorced couples who were married in the state that granted their divorce. If one looks at the regional breakdown for each of the five years between 1870 and 1916 for which this calculation was made, two things are clear: the percentage is lowest for the West (ranging from 48.4 to 55.2, and showing no particular trend over time), and highest for the South (ranging from 81.9 to 90.5, but trending consistently downward from 1880 to 1916). During this period, the South also had the lowest overall divorce rates (see Table One) and the West, as always, the highest. This statistic is available for only one later year, 1960, by which time the South had the highest divorce rate for any region except the West. And in 1960, the South's percentage of divorces granted to couples married in the state of the divorce had slid to 61.1--the lowest percentage outside the West (which of course continued to also have the highest divorce rates.) No other region showed nearly as large a change in either statistic as did the South.[27] Although other explanations are not logically excluded, certainly one plausible explanation

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26. I compare in-migrant rates with subsequent rather than contemporaneous divorce rates because my intuition was not that movers concurrently divorce, but that willingness to migrate may identify persons in the population at a higher risk of divorce over time--because, e.g., of their temperament, or employment instability, or level of discontent generally.

A colleague pointed out that one does not get similar correlations between divorce rate and in-migrant rate if one examines changes over time, within regions, rather than comparing regions at different times, as I did. However, that alternative analysis is affected by the generally increasing divorce rate everywhere during these a particular time periods, a powerful general trend that probably swamps the mobility factor. (I owe this point to Sharon Lohr.)

27. This data is taken from Table 17, at page 43, of *100 Years of Marriage and Divorce Statistics, United States, 1867-1967*, National Center for Health Statistics, Vital and Health Statistics Series 21, No. 24, Dept of Heath, Edu, and Welfare Publication No. (HRA) 74-1902 (1973). In fairness one must also observe that by 1960 the percentage of divorces issued to couples married in that state had converged, and the South's rate was only very slightly below that of the Midwest. But the shift in the two regions relative percentages over this time period is still dramatic.

for this pattern is that divorce rates are higher among persons who have recently moved into the state, and so as these in-migrants increase in number, they both drive up the overall divorce rate, and drive down the percentage of divorces involving long-term residents.

The final bit of confirming evidence is obtained by relating another census bureau tabulation with divorce rates. The Census reports the percentage of residents of each state who were born in that state, and the states' rank order on this measure.[28] For example, in 1990, 80% of Pennsylvania residents were born in that state, ranking it first among the states on this percentage. Florida ranked last, with only 30.5% of its residents born there. One can also rank the states by their 1990 divorce rate, from the lowest to the highest rate.[29] The correlation between these two ranks is .26, indicating a mild tendency for states with the lowest proportion of newcomers to have the lowest divorce rates.[30]

B. The Employment of Wives

A second cultural force that most observers believe played an important role in increasing divorce rates is the enormous increase in the participation of married women in the paid labor force.

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28. The Census provides this data on the web. The 1990 data I used here is at http://www.census.gov/population/socdemo/migration/pob-rank.txt.

29. As previously noted, good data on divorce rates began disappearing in the 1990's. For this calculation, I relied upon the *Advance Report of Final Divorce Statistics, 1989 and 1990*, in Vol. 43, No.9 Supplement, Monthly Vital Statistics Report, March 22, 1995, published by the National Center for Health Statistics. There is no final report, and this "advance report" has only incomplete data for Indiana, Lousiana, and New Mexico. I therefore omitted these three states, as well as Nevada (as always) from the calculations I report here.

30. I thank Sharon Lohr for suggesting this calculation to me. A relationship between mobility and divorce analysis may also shed light on the relatively high divorce rate for Americans as compared to Western Europeans, in that Americans are more mobile than are Europeans. I leave it to others to find the data to test this hypothesis.

Reviewing the literature, Cherlin concludes that while the evidence that the increase in women's participation in the labor force contributed to the 1960-1980 rise in divorce rates is necessarily "circumstantial,...it is stronger and more suggestive than that linking any other concurrent trend with the rise in divorce." [31] Supporting Cherlin's conclusion is the fact that most divorces today are sought by women.[32] It thus seems logical to suggest that anyone seeking to explain the increase in divorce rates during this period should look for changes in factors likely to affect the motivation of wives. Their increasing rates of employment is such a factor. Economists suggest simply that such employment, being associated with a decline in marriage role specialization, leads to a decline in the benefits derived by the spouses from their marriage. A more feminist-friendly take on the same phenomenon argues that rising female employment increases the proportion of women who feel financially able to escape a bad marriage. In one version or the other, the argument commands a wide consensus in the social science literature, although methodological difficulties have presented some challenge to those seeking empirical support for it.[33] One can perhaps argue

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31. Cherlin, MARRIAGE, DIVORCE, REMARRIAGE 53 (Rev. ed. 1992).

32. Braver, Whitley, and Ng, *Who Divorced Whom? Methodological and Theoretical Issues*, 20 J. Divorce and Remarriage 1 (1993).

33. See Cameron, *A Review of Economic Research into Determinants of Divorce*, 17 British Review of Economic Issues 1 (1995) for a general review of the literature. He concludes that there is wide consensus on the positive association of divorce with female wage rates and its negative association with male wage rates. A more recent attempt to overcome the methodological challenge, which also contains a more recent if less comprehensive review of the literature, is Ruggles, *The Rise in Divorce and Separation in the United States, 1880-1990*, 34 Demography 455 (1997). Ruggles looks at census data on marriage and divorce and on male and female employment, by local area, and attempts to prove the theory by showing an association between local areas with a higher percentage of employed women and higher divorce rates. He finds this association for each of the decades he examines between 1880 and 1990. He finds an even stronger relationship over this time period between local divorce rates and male employment, but with a negative sign, also consistent with prevailing theory. But male employment patterns cannot explain the persistent rise in divorce rates over the last 100 years because there has been no corresponding long-term decline in male employment--while of course there has been a corresponding long-term increase in female employment. Male unemployment might thus explain certain short-term changes in divorce rates over particular periods or in particular

that rising divorce rates encouraged women to seek market labor, or that other phenomena caused changes in both women's economic behavior and their choice to divorce.[34]

Women's participation in the labor force has also been offered as a reason for declining marriage rates. Because I explore that related hypothesis at length in the second part of this paper, I do not pursue it further here.

C. Some Concluding Thoughts

The decline in divorce rates since 1981 is surely good news, and appears to be the most sustained decline on record. (Divorce statistics only go back to 1870.) The interest in covenant marriage seems part of a general cultural trend that includes a more negative attitude toward divorce. A consistent decline in geographic mobility over the past seven years[35] may forecast a further decline in divorce rates. Nonetheless, it would probably be a mistake to expect, any time soon, a return to the divorce rates of the 1950's and early 1960's.

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locales, but not the long-term general trend.

For criticisms of Ruggles, see Preston, *Comment on Steven Ruggles's "The Rise of Divorce and Separation in the United States, 1880-1990"*, 34 Demography 473 (1997) and Oppenheimer, *Comment on Steven Ruggles's "The Rise of Divorce and Separation in the United States, 1880-1990"*, 34 Demography 467 (1997). Preston focuses on the problem of separating the cultural and employment explanations, while Oppenheimer argues from the prespective of one of the few social scientists who does not believe the prevailing theory. Ruggles' response is at 34 Demography 473 (1997). See also Ian Smith, *Explaining the Growth of Divorce in Great Britain*, 44 Scottish J. Political Economy 519 (1997). He compares trends in Scotland with those in England, given that divorce law changed at different times, and concludes the law had little impact on the divorce rate, while the rising real earnings of women did--but not women's rising *relative* earnings (to men).

34. This point is noted in Preston, supra. See also Johnson and Skinner, *Labor Supply and Marital Separation*, 76 American Economic Review 455 (1986), who found that women typically increase their labor supply in the three years preceding a marital separation. That behavior could reflect their anticipation of the separation, or it could be a factor contributing to the separation, or both.

35. U.S. Census Bureau, Current Population Reports P20-520, *Geographic Mobility, March 1997 to March 1998*, (January 2000), at 1.

The current rate of decline is far more modest than the remarkably high annual rate of increase in the divorce rate that was sustained between 1965 and 1979. Women's employment, while no longer on a steep rise (as we shall see in the next section) is not declining either. It thus might be reasonable to guess that divorce rates will continue a modest decline over the next decade, but not a large one. During the decade they might stabilize at a somewhat lower level than today.

I also doubt that there will be a dramatic reversal in prevailing no-fault divorce laws. The belief that marriage and divorce are matters for regulation by private commitment rather than legal compulsion also appears to remain strong. The two states adopting covenant marriage have found that their constituents have little interest in it,[36] and it has been defeated in other states in which the legislature has considered it.[37]

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36. The Maricopa County (Phoenix) clerk issued 6,224 marriage licenses between August 1, 1998 and January 31, 1999. The new covenant marriage license law took effect on August 21, 1998, and from that day through January 31, 1999, 31 covenant marriage licenses were issued. These figures actually overstate the proportion of all Maricopa County marriage licenses that are covenant marriages, because Justice Courts and City Clerks in Maricopa County also issue marriage licenses, but not covenant marriage licenses. E-mail from Maureen Ramroth, Maricopa County Clerk's Office, February 22, 1999. Professor Steven Nock of the University of Virginia found that in the year following adoption of Louisiana's covenant marriage law, only 1.6 % of all new marriages in that state were covenant marriages. The percentage remained essentially unchanged during the first six months of the succeeding year. I thank Brian Bix for sharing with me the e-mail he received from Steven Nock containing this data.

37. One recent rejection occurred in Colorado. Arizona Capitol Times, March 5, 1999 at p. 13. The defeated Colorado measure was HB 1194. And while Arizona did follow Louisiana in adopting covenant marriage, it passed a much-weakened version. Under the Arizona law, a spouse may petition for divorce with the claim that he or she expects that the parties will live apart for the required two years. The actual divorce decree is then deferred until the two year period has run, but the court may in the interim issue temporary orders of support. See Arizona Rev. Stat. § 25-903. These concessions from the language of the original Louisiana statute were required for passage, and even then the law passed by only one vote.

II. Marriage

Even before the divorce rate decline, which began between 1979 and 1981, the United States began to experience a significant decline in marriage rates, as Table Two shows.

Table Two

Marriages Per 1000 Unmarried Women, 15 to 44 years old[38]

Year	Marriages Per 1000
1969	149
1970	140
1974	128
1975	118
1978	109
1982	101
1988	91

The years shown in the table are the years during which the major decline occurred. The marriage rate remained steady at about 91 in 1989 and 1990, the most recent years for which final marriage rate statistics are available. Provisional marriage rates declined annually between 1990 and 1996, falling to 81.5, before rebounding slightly to 81.8 in 1997.[39] Over

38. See *The Big Picture*, American Demographics, August 1997, at 35. Marriage rates and divorce rates (as conventionally measured) affect one another. Divorce rates, conventionally measured as divorces per 1000 people, necessarily decline with marriage rates (all else being equal), since the number of people eligible for divorce declines with the marriage rate. So declining marriage rates accounts for some of the divorce rate decline (but only some). Divorces per 1000 married persons is a better measure of divorce rates because it does not suffer from this difficulty. It also shows that American divorce rates peaked at about 1980 and began declining after that. See Andrew Cherlin, MARRIAGE, DIVORCE, REMARRIAGE 21 (Rev.Ed., 1992).

39. National Center for Health Statistics, Monthly Vital Statistics Report Vol. 46, No. 12, July 28, 1998, at page 3.

the same time period, the age at first marriage has steadily increased.[40] This will push down the marriage rates for a time, even if the same proportions marry eventually. But the decline seems too large and too sustained to explain completely as a temporary effect of this kind.[41]

Why marriage rates have declined is not clear. One possible explanation--that declining marriage rates evidence a declining interest in being married--is probably wrong. The percentage of Americans between 18 and 29 who tell interviewers that a "happy marriage" is part of the "good life" actually increased between 1991 and 1996, from 72% to 86%, while marriage rates were declining.[42] It thus appears that Americans *want* to marry as much as

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40. The age at first marriage was relatively stable from 1950 to 1976, increasing over that period by only one year. But it then took only five more years for it to increase again by one year, and then again in four years. The increase in age at first marriage now seems to be leveling off. See the following chart, derived from Bureau of the Census, Table MS-2, Estimated Median Age at First Marriage, by Sex, 1890 to Present. (January 7, 1999). http://www.census.gov/population/socdemo/ms-la/tabms-2.txt.

INCREASE IN MEDIAN AGE AT FIRST MARRIAGE, IN YEARS, OVER SELECTED TIME PERIODS

Period	Length of Period	Women	Men
1950-1976	26 years	1	1
1976-1981	5	1	1
1981-1985	4	1	0.7
1986-1992	7	1.1	1
1992-1998	6	0.6	0.2
Median Age at First Marriage in 1950		20.3	22.8
Median Age at First Marriage in 1998		25	26.7

41. One estimate, made in 1991, was that the percentage who never marry in their lifetime will increase from five to "not more than ten" percent, with others simply marrying later. Francine Blau, Marianne Ferber, and Anne Winkler, THE ECONOMICS OF WOMEN, MEN AND WORK 274 (3rd ed., 1998). At least one careful researcher does seem to think the story is marriage delay more than marriage avoidance. See Valerie Oppenheimer, *Women's Rising Employment and the Future of the Family in Industrial Societies*, 20 Population and Development Review 293 (1994). Oppenheimer looks at several cohorts, beginning with white women aged 20-24 in 1965 and continuing through those reaching that age in 1990, and shows that the percent still single tended to converge once they were in their 30's. The problem, of course, is that the most recent cohorts were not yet in their 30's when this data was collected. *Id.* at 306. Another problem is that her data on black women suggests the contrary, that the younger cohorts are in fact less likely to ever marry.

42. *The Big Picture*, note 34, *supra*.

they ever have, in which case the declining marriage rates would seem to suggest they have more difficulty than they once did in finding appealing marriage candidates. Why this might be so is something of a puzzle. Has the candidate pool declined in quality, or have people become more demanding in their requirements? Do both men and women have more difficulty finding acceptable mates, or is the problem more gender-specific? Of course, no one really knows the answers to such questions. But there are hypotheses and evidence that one can consider.

A. Marriage Rates, Women's Employment, and Traditional Marital Roles

I want to examine one hypothesis in particular, that the increase in women's labor market participation has contributed importantly to declining marriage rates, as well as to increasing divorce rates. Both consequences are plausible if one believes that wives' employment reduces the attractiveness of marriage to either spouse. In the usual explanation, the important actor is the woman, whose tolerance of flaws, in a husband or a suitor, is thought to decline as her own earnings increase. And indeed, there are studies that show that declines in marriage rates are associated with increased employment opportunities for women, as well as those showing that women working outside the home are more likely to divorce than homemakers.[43] This apparently inverse connection between wives' employment and the rate of marriage formation has been the consensus view of social scientists.[44]

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43. See the studies cites by Cherlin, Marriage, Divorce, Remarriage 51-52 (Rev. Ed. 1992).

44. Francine Blau, Marianne Ferber and Anne Winkler, THE ECONOMICS OF WOMEN, MEN, AND WORK 271-73 (3d ed. 1998).

As a leading critic of this consensus view has observed, its widespread acceptance results in part from its compatibility with highly divergent ideologies.[45] Feminists can be comfortable with the idea that the traditional patriarchal marriage relied for its survival on a socialization process that constrained women's choices within boundaries set by a marital role of financial dependency. As new-found financial self-sufficiency makes women's choices less constrained, they less often chose to enter a patriarchal marriage. Economists have long seen marital roles as an example of the efficiencies of specialization: the wife with lower earning potential focuses on the family's domestic needs, the husband with higher earning potential focuses on realizing that greater potential, and both the spouses, and their children, benefit from the resulting returns to this specialization. But when the earnings potential of women rises, the return to marital specialization declines (because the wife's opportunity cost for domestic specialization increases), and the appeal of marriage declines with it.

But of course, neither theoretical thumbnail is complete. Both explain why women's economic progress would lead to women finding the traditional marriage less appealing, but neither explains why the consequence would not be a change in marital roles rather than a decline in marriage rates. Women's rising wages produce declining net returns only to the traditional, gender-bound marital roles (since the opportunity cost of wives' "specializing" in domestic production increases). In a truly unconstrained market, higher earning women might choose lower earning men who would specialize in domestic production. So while women's advancing market success might reduce the appeal of traditional patriarchal marriages, that effect should be offset by a corresponding increase in the appeal of

45. Valerie Oppenheimer, *Women's Rising Employment and the Future in the Family in Industrial Societies*, 20 Population and Development Review 293, 316 (1994)

matriarchal marriages. (Egalitarian marriages are of course also possible, but here perhaps the ideologies diverge: the economist would not predict egalitarian marriage–by which I mean a marriage in which the spouses share domestic tasks equally, and have equal market labor commitments–except in the relatively unusual case in which the spouses have nearly identical earnings potential, and perhaps not even then.[46]

A full account of the impact of women's rising earning potential on marriage rates must thus also show that marital roles have not changed, and should ideally explain why. The disproportionate responsibility for domestic duties shouldered by working wives has been a familiar theme of feminist literature, and no one really contests the factual claim. Explaining it is another matter. It must in some sense result from the interaction of common preferences of men and women, whether or not one regards the preferences as unfairly or improperly constrained. One story assumes that few men will accept a financially dependent, domestic, marital role. So while successfully employed women may look for husbands more interested in child care than careers,[47] they cannot find them. Some may then settle for a less ideal arrangement, even if it is not their first preference, because they

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46. It may be that where the parties are equal earners, they will still benefit from specializing, because neither may maximize earning potential if If they do not specialize. Or, they may find that domestic tasks they both deem important, such as child care, cannot be performed at a level either or both of them believe necessary. So the parties may conclude that they maximize their utility, in income and parenting combined, if one works full time while the other works part-time. See also Amy Wax, *Bargaining in the Shadow of the Market: Is There a Future for Egalitarian Marriage?*, 84 Va.L.Rev. 509 (1998). Wax offers a feminist perspective as well as an economic analysis. Agreeing that an egalitarian marriage is not necessarily one in which the parties have identical roles, Wax employs bargaining theory to reach a pessimistic conclusion about the prospects for egalitarian marriage in a broader sense--marriage in which the utility gains are more nearly equal–and worries that the declining attractiveness of marriage to women may indeed be the most important threat to the institution.

47. At least one feminist writer has urged that strategy on women, Rhona Mahony, Kidding Ourselves: Breadwinning, Babies, and Bargaining Power 215-38(1995). Amy Waxconcludes that Mahony's suggestion "is unlikely to work very well", and it seems certain she is correct. See Wax, *supra* n. 42, at 644-45.

regard remaining unmarried as even less desirable. Others may not marry. A second story is that women don't want domestically inclined men anyway, that even successfully employed women prefer husbands who can earn more than they do--who earn enough to pay for the especially high opportunity cost incurred when a highly skilled woman foregoes some of her earning potential to care for her children. In this story, women end up performing more of the domestic role because they wish to. (Of course, they may have a greater interest in some portions of it, such as child care, than in other portions, such house care–but settle for the best available package.)

The problem for women who prefer husbands who earn more than they do arises when their own earning potential increases, since the pool of appealing men then shrinks. So the second version of the story, just like the first version, also concludes that as women earn more they have more trouble finding partners with the attributes they seek. Note, by the way, that if this second story is true, then one reason why women usually earn less than their husbands is their choice of husband: they *seek* men with earning potentials greater than their own. Social scientists have certainly observed that this is the traditional preference pattern of men and women.[48]

My own suspicion is that both stories describe the preferences of a large proportion of men and of women, although of course not everyone. But even though the stories must be

48. In what must be the most extreme cultural manesfestation of the view that women should marry "up", the most elite clans of certain provinces in northern India routinely committed infanticide on infant daughters, who had no prospect of marriage because there was no place "up" to go. That the phenomena was more complex than a simple cultural bias against daughters is evidenced by the fact that the practice was in proportion to the social status of the family: lesser elites killed only later born daughters, while the lowest ranking clans kept some or all their daughters. Sarah Blaffer Hrdy, MOTHER NATURE 326-27. 338-340 (1999). Amy Wax observes that women's "emotional attraction to men of higher status...may be just as deeply ingrained and difficult to alter as men's penchant for younger women", Wax, *supra*, at 645.

inaccurate for some men and women, they can still explain declining marriage rates, if they are true for many of them. The effect may nonetheless be small, for even if this account is true for most men and women, it is also incomplete. It identifies only one preference from among a much larger constellation of needs, motivations and desires that must influence both women and men in love and marriage. It is one thing to say that women are more likely to be attracted to men capable of comfortably supporting them and their children; it is another thing to say it is all they care about.[49] So I doubt, for example, that women with this preference, and a good income potential, will necessarily require a husband who can pay full value for the opportunity cost of her projected domestic role. Nonetheless, the hypothesis of a inverse connection between gender income equality and marriage rates, mediated by resistance to changing gender roles, seems worth exploring. I will explore it here by looking at some data on the relative earnings of husbands and wives, as it has changed over time, as one good window into changing marital roles. I will also look at what people in different societies say about marital roles, to get some sense of the roles' cultural malleability.

B. Marital Roles and Labor Force Participation

Everyone knows that a dramatic increase in the proportion of women in labor force was a major demographic story of the second half of the twentieth century. Has that translated

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49. Indeed, because the likelihood an individual marrying is affected by so many variables, simple connections between any one important variable, and the marriage rate, may easily be concealed. Oppenheimer, who has been skeptical of the hypothesis that women's rising earnings have contributed to the decline in marriage rates, concludes from data on white women that the likelihood of a woman marrying does not appear to be associated with her level of education. Yet, as Oppenheimer herself carefully points out, this does not necessarily mean that a women's chance of marrying is not reduced by the rising earning potential associated with greater education. Rather, the lack of association may reflect the conflicting impact of several variables. More highly educated women probably have better access to marriage markets, not only from higher education itself, and the social networks that arise from it, but also in the job environments that higher education allows them to enter. Oppenheimer, *supra*, at 315.

into a change in proportion of marriages in which the wife is the dominant breadwinner? One way to look at that question is to ask about the proportion of marriages that conform to the traditional model, in which the husband works and the wife does not work, and the proportion that conform to a complete role-reversal, in which the wife works and the husband does not. Figure Three gives these proportions for the years 1978 to 1998, the most recent year for which we have data.[50]

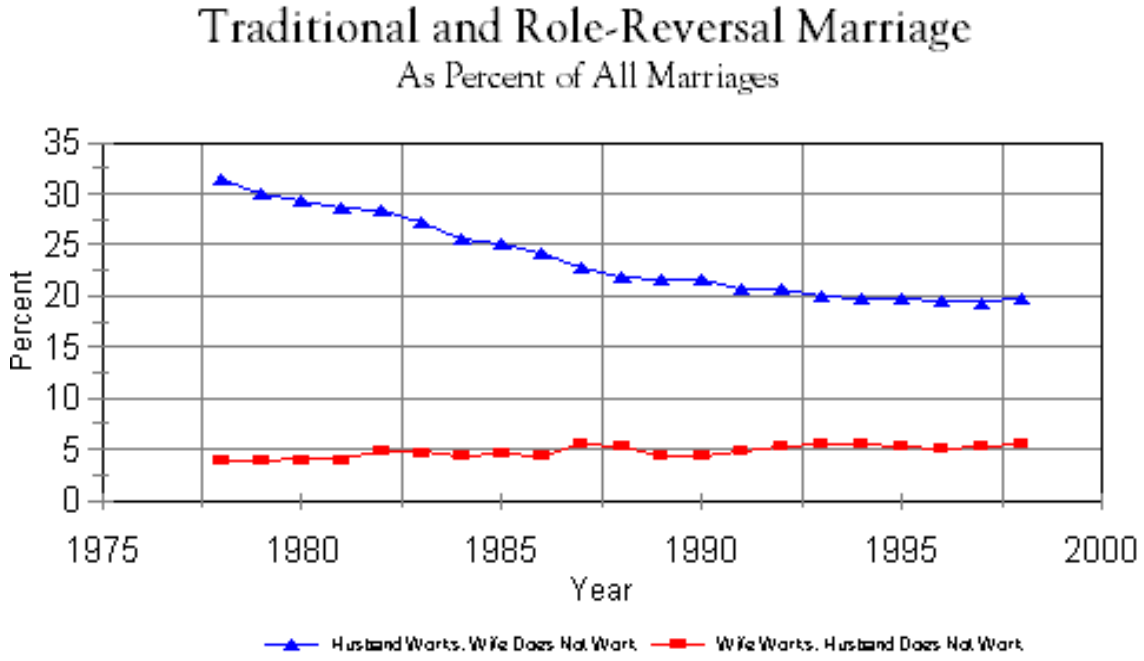

Figure 3

Figure Three tells us several things. First, the traditional marriage of breadwinner-husband and homemaker-wife has indeed declined in frequency. On the other hand, its converse has not increased: marriages in which the wife is the sole breadwinner are just as

50. The data in Figure 3 is derived from Table F-13, *Work Experience of Husband and Wife*, in the Historical Income Table–Families, posted by the Census Bureau at http://www.census.gov/income/histinc/.

uncommon as they were a decade ago, remaining fixed at about one in twenty.[51] It also seems likely that many of the marriages in which the wife alone works involve a husband who has retired while the wife has not, given that husbands are on average older than their wives.[52] It may be mistaken to count these as role-reversal marriages, because the situation captured in this snapshot taken in the spouses' senior years is likely to be inconsistent with the pattern that prevailed during most of their marriage (including the years during which they raised children). True role-reversal marriages are thus probably fewer than one in twenty.[53]

Figure Three also shows a shift in the trend beginning about 1988, when the rate of decline for traditional marriages eased. The proportion of marriages in which the husband was the sole breadwinner has held steady since 1990, even increasing slightly. Some related data, presented in Table Three, shows a similar pattern. Line 1 of Table 3 avoids the complication of retired husbands by looking only at marriages in which the husband works (full time or part time). It answers this question: how often does a working husband have a wife who earns more than he does? It thus complements the data presented in Figure 3,

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51. Oddly, the media attention given "stay-at-home" dads, while often portraying them as a new trend, usually provides further evidence of their relative scarcity. The stories typically have a "man bites dog" quality. See, e.g., *At-Home Fathers Step Out To Find They Are Not Alone*, New York Times, January 2, 2000, at Section 1, page 1. The article reports on a convention of an organization called "At-Home Dads". A national organization, the convention drew 85 male attendees from 20 states–up from 35 attendees at its inaugural meeting in 1996, but down from 100 at the 1998 convention. Strategies for dealing with the isolation experienced by these house-husbands was a principal topic addressed at the convention.

52. Note that the average age differential between husbands and wives remains fairly stable, even as the average age at first marriage rises for both. See the data at note 55, *supra*.

53. Indeed, there may be reason to think they are fewer even than they once were. The labor force participation rates of men declined over the final two decades of the last century, probably as a result of declining labor force participation rates of older men. It thus may be that more of this five percent consists of retired men and their working wives today than was the case in 1980.

which tells us how often we see the pattern in which the husband doesn't work at all while the wife does. In 1981 a working husband was the dominant financial partner in 90% of all marriages, but by 1992 that figure had slipped to about 83%. Since then, however, there has been almost no change in the proportion of working husbands who out-earn their wives. This statistic thus tells a story of recent role stability that is similar to Figure Three.

Table Three

Relative Earnings of Husband and Wife, and of Men and Women,
Three Selected Years[54]

	1981	1992	1997
1. Marriages in which Wife earns more than Husband, As percent of all marriages in which Husband works	10.0%	16.5%	17.2%
2. Median earnings of Women Working Full Time, as percent of male median, for			
all men and women, 16 and older	64.5%	75.8%	74.5%
men and women 20 to 24 years old	82.5%	94.2%	90.6%
men and women 25 to 34 years old	70.4%	82.0%	82.9%

54. The first line in this table is derived from the historical income tables posted on the Web by the Census Bureau: Table F-13, at http://www.census.gov/income/f13.txt; Table F-14, at http://www.census.gov/hhes/income/histinc/f14.html, and Table F-19, at http://www.census.gov/hhes/income/histinc/ f19.html. From these tables it is possible to get the number of marriages in which both husband and wife had earnings, with the wife earning more than the husband. I then divided this figure, for each year, into the total number of marriages in which the husband worked, also available from these tables. The three sets of figures in the second line are taken Bureau of Labor Statistics, *Highlights of Women's Earnings in 1998*, Report 928 (April, 1999), at Table 13. This data is based upon median weekly earnings of "full-time wage and salary workers". The BLS defines full-time as 35 hours or more per week.

One often sees data on "dual-earner" marriages that report higher figures than those provided in Line 1 of Table Three. E.g., Winkler, *Earnings of Husbands and Wives in Dual-earner Families*, Monthly Labor Review, April, 1998, at 42 (observing that the proportion of dual-earner marriages in which the wife earned more than the husband increased from 16% in 1981 to 23% in 1996). The higher figures in these accounts refer, however, to the proportion of *dual earner* marriages in which the wife earns more than the husband. They overstate the relative income position of wives, to husbands, because they ignore one-earner marriages, in which husband-breadwinners are far more common than wife-breadwinners, as Figure Three shows. A better figure might be the proportion of *all* marriages in which the wife earns more than the husband. These figures, for 1981, 1992, and 1997, respectively, are 13.2%, 18.5%, and 19.1%, as derived from the historical income tables noted above. These numbers have a different problem, however: they include the marriages in which the wife earns more than the husband because the husband does not work, and some proportion of these involve younger wives with older, retired, husbands. The calculation provided in Line One of Table Three avoids this problem by looking only at marriages in which the husband works (full or part time), and giving the percentage of these marriages in which the wife earns more. One must note, however, that these figures are not perfect either, because they effectively exclude the small proportion of true, complete, role-reversal marriages from the calculation.

Line 2 of Table Three provides data on the relative earnings of men and women generally, as a context in which to look at the relative earnings of husbands and wives. Two things appear from this data. First, the gap in the earnings of men and women closed considerably between 1981 and 1992, but hardly narrowed at all since that time. Second, as a general matter, younger women have earnings much closer to their male peers than older women have to theirs. The youngest adult women employed full time have a wage and salary median income that is over 90 percent that of men's. This would not appear to be generational effect, given that the major share of progress toward gender equality in earnings took place in the 1980's rather than more recently. It would seem instead to be the result of diverging life choices as men and women age. As women become wives and mothers, and men become husbands and fathers, their earnings are affected. Wives are more likely than single women to work part time, which may affect their earnings not only during their period of part time work, but afterward as well, even if they return to full time labor.[55] Only forty-six percent of married women worked full time in 1997, compared to 83 percent of married men.[56]

Even among those working full time, the figures may be misleading. The Bureau of Labor Statistics, which is the source of such earnings data, considers everyone working more than 35 hours a week to be "full-time"; those working fifty hours a week are thus lumped together

55. See Joyce Jacobsen and Laurence Levin, *Effects of Intermittent Labor Force Attachment on Women's Earnings*, Monthly Labor Review, September 1995, at 14.

56. United States Department of Labor, *Report on the American Workforce* (1999), at Table 3-5, page 113.

with those working thirty-five.[57] But women working full time work fewer hours than men working full time,[58] even when they have the same educational attainment[59] and same profession[60]. This difference almost surely rises from the impact, on the overall averages, of women with children.[61] There has been much written about the fact that wives bear a larger share than their husbands of the responsibility for the family's domestic chores, even when they work full time,[62] which must limit the hours they are willing to make available for market labor. But because those with limited work availability may advance less rapidly in their earnings potential than do those who work more, even the hourly earnings gap

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57. Thirty-five hours a week seems a low figure to use in defining full time work. In fact, 95% of working American men put in more than 35 hours a week, as do 82% of working American women, according to an analysis of 1986 data from the Luxembourg Income Survey. Rosenfeld and Birkelund, *Woman's Part-Time Work: A Cross National Comparison*, 11 European Sociological Review 111 (1995), at Table 3.

58. June O'Neil and Solomon Polacheck, *Why the Gender Gap in Wages Narrowed in the 1980's*, 11 J. Lab. Econ. 205, 208 n.1. One can also note that the gap between men's and women's hourly earnings is smaller than the gap between the earnings of wive and husbands working full time, which also suggests that a difference in hours worked is essential to explaining the total gap In 1998, wives working full time earned only 71 percent of what husbands working full time earned–yet, the median hourly earnings of women paid hourly rates was 82 percent of the male hourly rate. U.S. Department of Labor, Bureau of Labor Statistics, *Highlights of Women's Earnings in 1998*, Report 928 (April 1999), at Table 17, page 29. Of course, this hourly figure is not applicable to those not paid in hourly rates, and can thus tell only part of the story. What of people not paid by the hour? Victor Fuchs has reported that of married women with eighteen years or more of schooling and at least one child under twelve, only one in ten worked more than 2,250 hours per year, equivalent to 45 hours per week, 50 weeks a year. Yet half the husbands of these women put in 2250 hours, and one-third worked more than 2500 hours Victor Fuchs, WOMEN'S QUEST FOR ECONOMIC EQUALITY (1988) at 47-48.

59. Thomas W. Harrell, *The Association of Marriage and MBA Earnings*, 72 Psych. Rep. 955, 959-60 (1993) (Men who had earned M.B.A.'s from Stanford between 1973- 1985 averaged work weeks of 55.7 hours; women averaged 47.1 hours).

60. Carol S. Weisman et al., *Sex Differences in the Practice Patterns of Recently Trained Obstetricians-Gynecologists*, 67 Obstetrics and Gynecology 776, 778 (1986). Women ob-gyn's were much more likely than men to work in settings, such as health maintenance organizations as compared to private practice, in which their hours could be limited.

61. See *id.* at 779 (presence of children at home increases the number of work hours for men and reduces the number of work hours for women). See also the data reported by Fuchs, n. 72, *supra.*

62. The title of Arlie Hochschild's book popularized the term *Second Shift* for this phenomenon.

between men and women will be affected by the tendency of women to work fewer hours..[63] So sacrifices in earnings potential for the sake of the marriage will be common even among wives who work full time during marriage, and also make it more likely that husbands will outearn their wives. Those sacrifices will be more reasonable to make if the husband, whose earning potential is not sacrificed, has a higher earning potential than the wife to start with.

These points are not new. Victor Fuchs, writing in 1988, was interested both in why the male-female earnings gap had not closed more rapidly in general, and why it had closed so much more between 1980 and 1986 than it had in prior years: Over those six years, women's wages as a percentage of men's increased by seven percent--an unprecedented rate of change.[64] Why was there progress just then, as compared to before or after? (Of course, Fuchs could not know about "after" when he wrote.) Anti-discrimination laws apparently worked little change in the wage gap between their enactment in the 1960's and 1980, and it was implausible to suggest that the sudden progress after 1980 was the result of increased enforcement vigor by the Reagan administration, which had then come to office.

Fuchs found that the post-1980 gains were disproportionately the result of very large gains by women then younger than 40. These women on average had significantly fewer children, and were significantly more likely to divorce, than their older sisters. Fuchs concluded that this willingness to have fewer children, and forgo some family life, was the principal explanation for their enhanced economic success. Surveying the economic facts

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63. Child care or maternity leaves cvertainly have a lasting impact on earnings history, as a variety of studies have shown. For one example, see Joyce Jacobsen and Laurence Levin, *Effects of Intermittent Labor Force Attachment on Women's Earnings*, Monthly Labor Review, September, 1995, at 14.

64. Victor Fuchs, WOMEN'S QUEST FOR ECONOMIC EQUALITY (1988) at 64-70.

more broadly, he found that women's greater willingness than men to make career sacrifices for their children was by far the most important source of their lower average earnings, swamping other factors such as employer discrimination. He looked at the hourly earnings of women aged 30 to 39 and found that even after controlling for age and education level, they declined proportionately with the number of children the woman had, in a pattern that changed little between 1960 and 1986.[65] He observed that a survey of corporate officers found that more than half the women were childless, while over 95 percent of the men were fathers, a reflection of the disproportionate family sacrifice that women must make for career success--a sacrifice he doubted most men were prepared to make. In other words, Fuchs saw the gender differences in economic data as a function of marital roles, while I have been asking whether trends in marriage and divorce rates could be a function of the economic data.

Surely both perspectives can be correct. If women earn less because they sacrifice earnings opportunities to care for their children, they may also favor husbands with incomes high enough to soften the impact of the earnings sacrifice they expect to make. The problem may arise from the fact that as their earnings potential increases, so does their sacrifice. Thus, the earnings they will require in a husband will also increase, accordingly.

1. Preferences and Economic Pressures

The claim that women work less because they prefer to have more time to care for their children does run up against some apparently conflicting facts. Even though true role-

65. Fuchs at 62.

reversal marriages remain as rare as ever, and economic equality between men and women has not yet been achieved, there *has* been a significant increase in the proportion of marriages in which the wife works. This is true for full-time as well as part-time work. The proportion of wives ages 25 to 54 who work full-time increased from 23 percent to 46 percent between 1969 and 1998.[66] Surely this is also evidence of a preference---a preference for market work and, presumably, for a reduced domestic role. Survey data of ever-married women under 45 supports this inference. In 1970 80% of them told interviewers they agreed with the statement that "It is much better for everyone involved if the man is the achiever outside the home and the woman takes care of the home and the family"; by 1989 less than 30% agreed with that statement. In 1970, about half agreed that "A working mother can achieve just as warm a relationship with her children as a mother who does not work"; in 1989 about 78% agreed.[67] These figures evidence a remarkably large change in attitude over a relatively short time. Maybe, then, we are in a transition period of changing preferences. Perhaps increasing numbers of women will be content to focus more on career and less on family.

A change in attitude can of course be the product, as well as the cause, of a change in behavior. Women who worry about the impact of their working on their children or their marriage, but who felt constrained, by economic factors or otherwise, to work more hours, might be expected to resolve those doubts by changing their beliefs so that they were in less tension with their behavior. This follows from the classic psychological theory of *cognitive*

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66. United States Department of Labor, *Report on the American Workforce* (1999), at 100.

67. Cherlin, *supra*, Figure 2-5, at 58.

dissonance.[68] This observation does not suggest that the change in attitude is any less real, and indeed, it may then feed further changes in behavior. But it does suggest that both the work behavior and the reported attitudes of women constrained by economic realities to work more hours may be an unreliable guide to the preferences they might express, or act upon, if less constrained by economic pressures. What we thus might want to know is what proportion of the 46 % of wives now working full-time would in fact work part-time, if their economic circumstances permitted.

No one can offer a precise answer to the last question, but there is evidence to suggest that economic pressures played a large role in the trend toward wives' increased market hours. Marital status has a much smaller impact on the likelihood that an African American woman will work part time, than on a white women, presumably because African American men earn less than white men.[69] The years during which wives increased their labor force participation were years during which many Americans experienced declining returns to each hour of market labor. The American expectation of economic progress, of advancing in the economic ladder over the level of one's parents, became increasingly difficult to achieve for families with only one breadwinner.[70] A recent report of the Department of Labor makes the point with a chart, reprinted here as Figure Four[71], which looks at the aggregate hours of market labor performed by husband and wife, and at their aggregate

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68. This point is also made by Fuchs, *supra*, at 30. The theory of cognitive dissonance was first proposed by Festinger in 1957, in A THEORY OF COGNITIVE DISSONANCE.

69. Fuchs, *supra*, at 45. Marriage increases the proportion of white women working part time by 13 points, but for African-American women, it is only 2 points.

70. Cherlin, *supra*, at 61, makes the same point.

71. This chart is taken from *Report on the American Workforce, supra,* at 102.

dollar return on those hours, comparing 1978 and 1997:

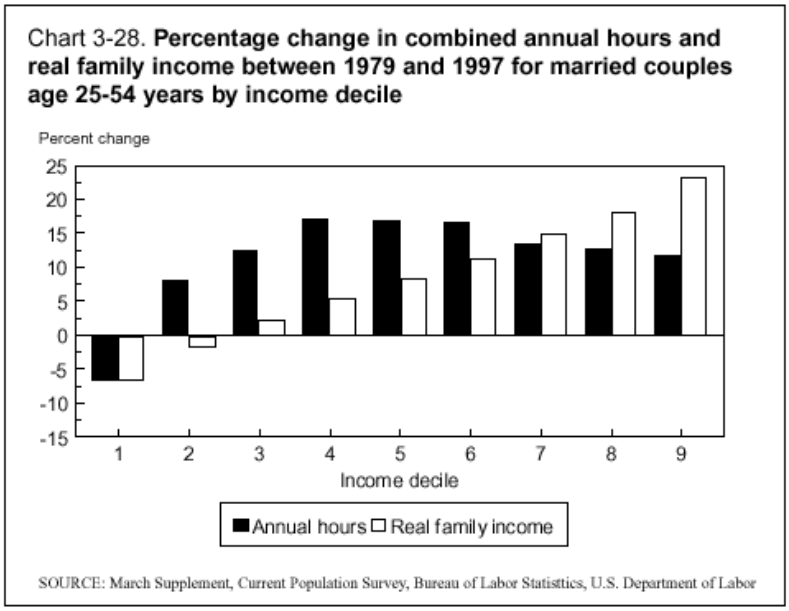


Figure 4

Figure Four shows that all married couples, except for those in the lowest ten percent of the income distribution, together worked more hours in 1997 than in 1979. But one can also see that for the fifty percent of the population from the second through the sixth decile, their increase in hours worked was not matched by a proportionate increase in income. Only families in the upper thirty percent of the income distribution experienced a growth in income per hour of labor, and this group increased their labor by a smaller amount than did those earning less. For a large swath of married couples, increased labor was apparently necessary for income maintenance, much less income growth. With the great majority of husbands already working full time, increased market labor by wives may have been the primary or perhaps exclusive potential source of additional hours of market labor that the

couple had available to deploy. Other data from the Department of Labor, reprinted here as Figure Five, shows that over this same time period the real weekly earnings of men between 25 and 54 years of age actually declined, except for those in the upper 20% in weekly earnings.[72] By contrast, women's weekly hours of labor not only increased during this same time period, but that their real weekly earnings increased disproportionately to their increase in hours.[73] So during the 1980's and 1990's, additional hours of paid labor by wives was clearly the most economically rational choice for married couples seeking to maintain or improve upon their parents' living standards.[74]

72. Figure 5 is taken from *id.* at page 97.

73. See *id.*, Chart 3-21, at page 97. That chart is not reprinted here.

74. Oppenheimer, *supra*, has argued that rising women's wages cannot explain declining marriage rates because their wages did not in fact increase. Her data, however, (based entirely on whites) does not dispute the steady increase in the ratio of women's earnings to men's between the mid 1970's and 1989. Indeed, she bolsters this point, because she shows that the ratio changed in this way when one looks at men and women out of school 1 to 3 years–a key population in the marriage market. Oppenheimer, *supra*, at 327. Her point is that, at least until the mid 1980's, men's declining real wages explained this trend, rather than women's rising real wages. That point is not inconsistent with the argument in the text however, which is based on the ratio of women's to men's income, not their absolute amounts.

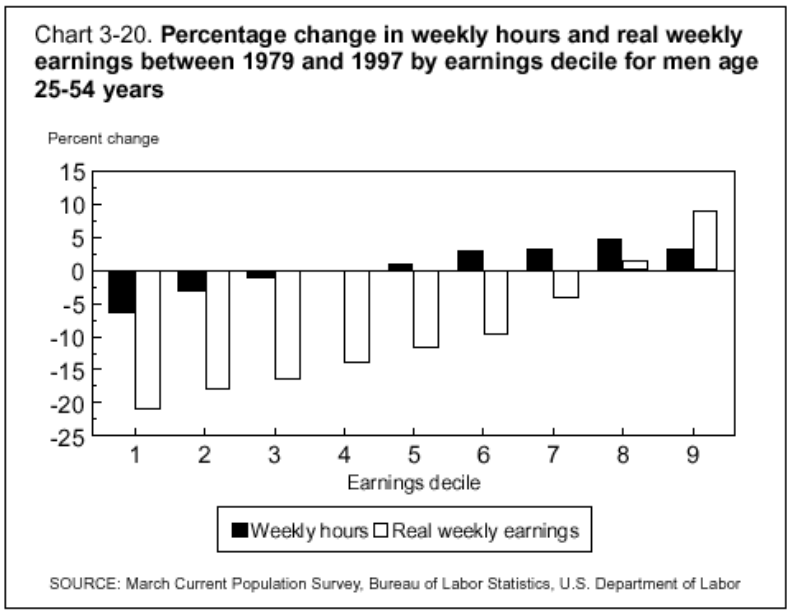


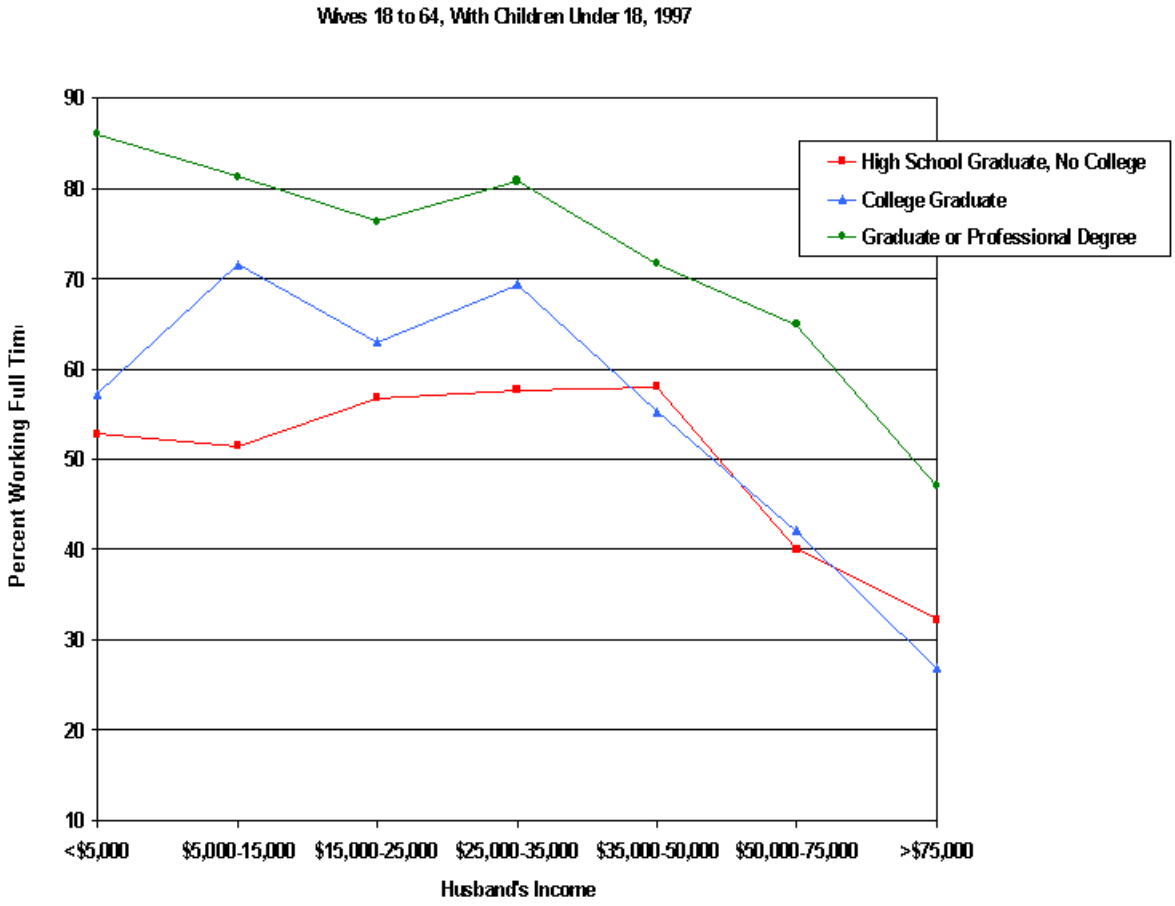
Figure 5

So there is good reason to believe that an important factor in wives' increased market hours is financial pressure. One way to pursue this question is to see how wives' work choices are affected by their husband's income: Presumably, the higher her husband's income, the less economic pressure there will be on the wife to work. From unpublished data collected in the 1997 Current Population Survey, provided me by the Bureau of Labor Statistics,[75] it was possible to derive the results presented in Figure 6, which shows the percentage of wives between the ages of 18 and 64, with minor children, who work full time, grouped by both husband's income, and the wife's educational attainment. One can see that for both college graduates, and wives with post-graduate degrees, the percentage working

75. The Bureau is part of the Division of Labor Force Statistics. I wish to thank Howard Hayghe of the Bureau for his patient help in locating and deciphering this data for me.

full time declines steadily once their husband's income exceeds an amount between $25,000 and $35,000. (The median income of husbands living with their wives was about $32,000 in 1997.[76]) High school graduates, perhaps inexplicably, persist in full-time work to somewhat higher levels of husband's income, but then decline with income as well.

Figure 6



As one might expect, wives' full time labor force participation is higher, at most levels

76. See Historical Income Tables, Table P-11, at http://www.census.gov/hhes/income/histinc/p11.html. The precise 1997 median income figure reported in that table for "males, married, spouse present," is $31,983.

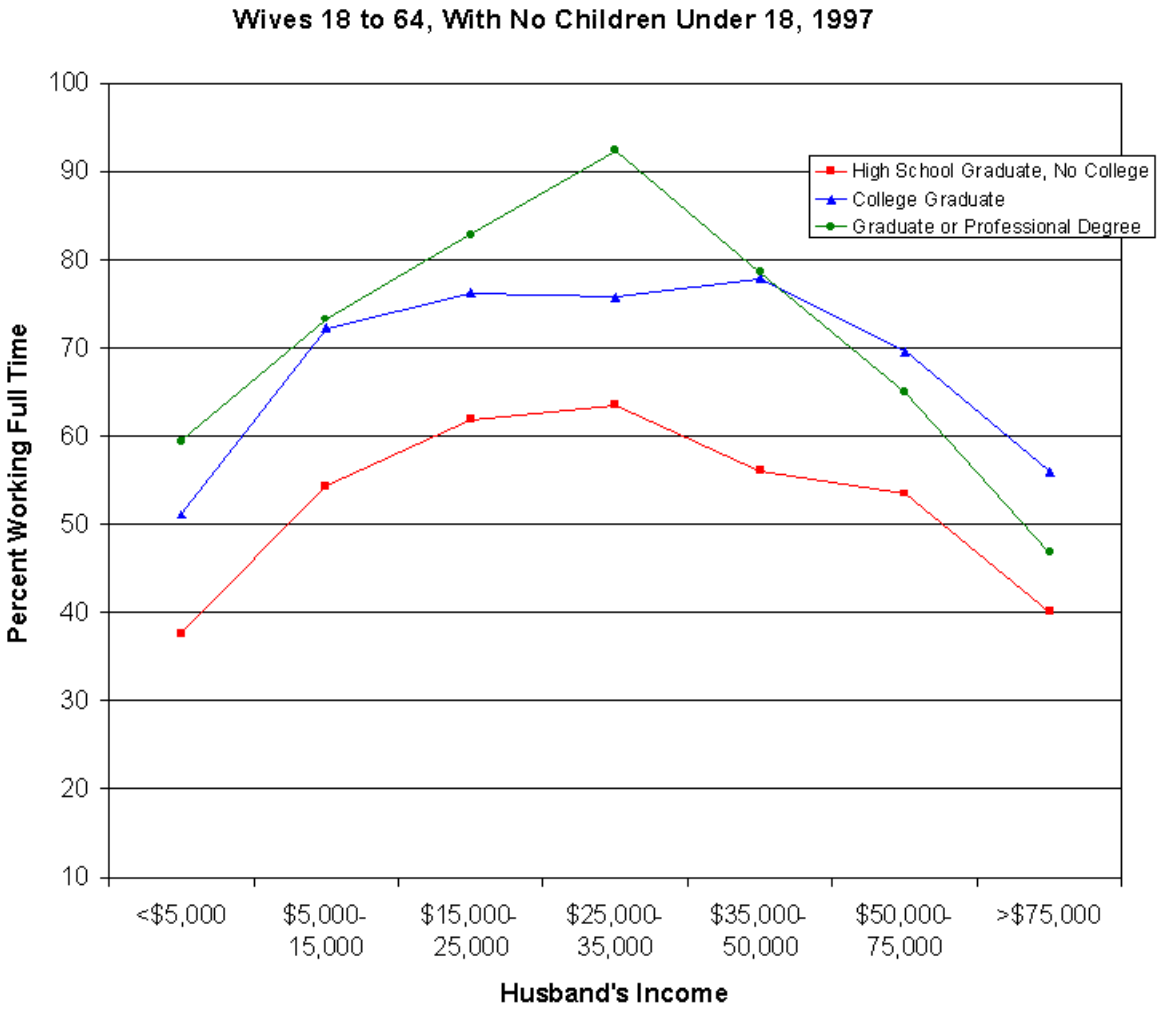
of husband's income, when they are better educated. The opportunity cost of the wife's withdrawal from full time work obviously increases, on average, with her level of education. But for most couples there is a level of husband's income which, once reached, induces them to incur this opportunity cost. Even wives with graduate and professional degrees do not usually work full time when their husband's income exceeds $75,000. For less well-educated wives, withdrawal from full-time work occurs at a lower levels of husband's income.[77] It thus appears that as economic pressures on their choice lessen, American wives increasingly choose to work part time rather than full time, regardless of their educational level. If that is their preference, then one would also expect most women to prefer potential spouses with an income potential sufficient to permit them to exercise it, which means that the income potential they will require in their prospective husband will rise along with their own. Perhaps surprisingly, the pattern for couples with no minor children, presented in Figure 7, while not identical, does show a similar decline in proportion of wives who work full time, as husband's income rises above the median. The difference, as compared to couples with children, is that at the lower levels of husband's income, the proportion of childless wives working full time generally increases with husband's income, until reaching a peak at the $25 to $35 thousand range. It then declines in a pattern similar to that for couples with children.[78] The lower proportion of these wives working full time at lower

77. It is the case that wives with a high school education begin working less at a higher income point than wives with a college education, with the result that the proportion working full time is slightly higher than college educated wives in the 35.000 to 50,000 income range. While no obvious explanation for this departure from the otherwise prevailing patterns presents itself, it does not alter the general point that for each level of educational attainment, there is a husband's income point above which wives' labor force participation declines.

78. One can again only speculate as to why the wives of lower earning husbands are less likely themselves to work full time. It may be that older, semi-retired couples are disproportionately represented among the lower earners, a phenomena one might think more likely in the group with no minor children than in the group that has

levels of husband's income may be the product of a disproportionate number of retired

Figure 7



husbands in this group, since the exclusion of couples with children under 18 will skew the group's age distribution toward both younger and older couples. Retired husbands at lower

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them.

income levels may be less likely to have wives working full time than husbands at those income levels who are employed, or who seek employment.

2. Attitudes toward work and gender: some international comparisons

We have thus far looked at women's actual work behavior as a window into their preferences. Of course, we can also just ask them. Looking at women's actual work choices has advantages over tabulating hypothetical choices made in response to a survey question. On the other hand, surveys allow one to put more particular questions, and to ask directly about attitudes. Recall that Fuchs was also interested in this question, since he saw a change in marital roles as a necessary predicate to women's economic equality. He supplemented his data on women's actual work behavior with a survey of his students at Stanford. Both the men and the women students said that happy marriages and successful careers were important to them, but the genders responded very differently when asked what changes they might make in their paid employment if they had young children: 60 percent of the women but less than ten percent of the men said they would quit or substantially reduce their hours of work.[79] From this and other data (such as the great difference between the genders in the frequency of child abandonment), Fuchs concluded that the different preference patterns of the two genders were unlikely to converge any time soon. There are other surveys with similar results[80]

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79. Fuchs at 47.

80. E.g., a survey commissioned in 1990-91 by the United States Information Agency asked men and women whether they agreed with these two statements: "A job is all right, but what most women really want is a home and children" and "Being a housewife is just as fulfilling as working for pay". Fifty-two percent of the American women agreed with the first statement, and 73 percent agreed with the second. (42% and 25% disagreed, the balance

One way to examine the likelihood that the preferences of American men and women will change and converge is to look at the preference patterns in other countries: this can perhaps tell us how malleable the preferences are, under the impact of cultural forces. A 1996 cross-national Gallup survey seems to suggest that Americans have persisted in a preference for traditional families more than the residents of some other developed countries. Two-thirds of Americans believe that one working parent is better for society than two, higher than in the UK (50%), France (56%), Spain (34%) or even Japan (52%).[81] Gallup also asked whether the respondent favored *men* working with *women* taking care of the family. Interestingly, while the proportion answering "yes" varied considerably from country to country, within each country the responses given by men and women were remarkably similar. Women were, in other words, more likely to give the same answer as given by their male compatriots, than the answer given by women in other countries. On one hand, the results confirm the implications of the economic data that many American women

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apparently having no clear opinion.) Men were slightly less likely to agree (50% and 66%, with 37% and 23 percent disagreeing). Office of Research and Media Reaction, USIA, *A World View of Women: Social , Political and Economic Attitudes* 29 (undated softcover). See also Chambers, *Accomodation and Satisfaction: Women and Men Lawyers and the Balance of Work and Family*, 14 Law & Soc. Inquiry 251 (1989) (reporting on survey conducting between 1981 and 1986, of 1976-79 University of Michigan Law School graduates; three fourths of women respondents described themselves as spending more time on their personal life, and less on their professional life, than men in similar positions; most reported themselves "quite satisfied" with this balance; 80 of married women lawyers had spouses with comparable or greater incomes than they had; only one had a househusband. Only 2 of 160 married men reported that their wives earned more than they did; 23 percent reported that their wives were homemakers). It is sometimes observed that dual earner parents may stagger their work hours so that one of them is available to care for their children during most of the day. Yet such couples, when interviewed, show very different motivations of the husbands and wives. When asked why ther worked weekends or evenings, only 8 percent of fathers mention child care responsibilities; 75% say simply that is a requirement of their job. On the other hand, most mothers answer the same question with the explanation that care of their family members, mainly their job, is the reason for their schedule. Presser, *Can We Make Time for Children? The Economy, Work Schedules, and Child Care*, 26 Demography 523, 530-31 (1989).

81. Hungary was the only country survey in which the proportion was higher than in the U.S. The Gallup Organization, *Gender and Society, Status and Stereotypes* (multinational polling), March 1996.

prefer traditional marriage. On the other hand, they also suggest a broader cultural malleability in women's work/home preference than some might expect. Gallup's results are set out in Table Four.

Table Four
Percentage Who Favor Men Working and Women Caring for Family

Country	Men	Women
USA	47	49
UK	34	33
France	50	45
Hungary	67	64
Japan	50	43
Mexico	27	33
Panama	33	31
Thailand	25	25
China	37	37
Iceland	35	28
Germany	30	26
Latvia	43	35
Lithuania	27	29

So Americans are much more likely to favor traditional marriage than the British, but only slightly more than the French or Japanese. None of the other surveyed countries, however, favor traditional marriage nearly so much as the Hungarians. Because the data suggest a high degree of cultural variation, it seems plausible to think the American view could shift. But on another scale, American and Hungarian women are far apart. Gallup also asked respondents whether they would want to be reborn as the opposite sex. In every country but Iceland, more women than men answered yes, suggesting that women generally find themselves less well-treated than men. But the size of the gender gap in the answers

varied enormously among countries. The results are set out in Table Five. By this crude measure, American women are relatively happy with their situation, while Hungarian women appear to be miserable (but not nearly so miserable as Thai or Chinese women):

Table Five

Would You Want to Be Reborn as the Opposite Sex?
(Percentage Answering "Yes")

Country	Men	Women	Gap
US	4	8	4
UK	7	19	12
France	9	18	9
Hungary	6	21	15
Japan	10	27	17
Mexico	5	17	12
Panama	6	13	7
Thailand	3	41	38
China	11	41	30
Iceland	9	9	0
Latvia	4	16	12
Lithuania	3	25	22
Germany	7	19	12

The conclusion one might thus draw is that while Hungarian women prefer traditional marital roles, they don't much like being women. American women, by contrast, combine a relatively high preference for traditional marital roles with a very high level of contentment with being women--higher than in any country but Iceland. The American data do not appear to be the stuff that a revolution in marital roles is made of.

The distinctiveness of the American situation may be of a different character than these

numbers first suggest, however, because differences in reported attitudes may not bear much relationship to differences in actual practice. For example, although the proportion of German men and women who tell Gallup that they reject the traditional sexual division of labor is considerably greater than in the U.S., contemporaneous data shows that American women in fact have a higher employment rate than German women.[82] The same pattern appears to prevail when we compare ourselves to the British.[83] So perhaps the real difference between Americans and others lies in our relative consistency between what we say we believe and how we act. One cannot tell, of course, whether the Germans and the British report less commitment to traditional gender models than they actually have, or whether they feel constrained to act more committed to traditional gender models than they actually believe appropriate. Either conclusion could explain why their expressed preferences differ from ours in one direction, while their actual behavior differs in the opposite direction. And either could perhaps also explain why they are, on average, less content than Americans with their gender.

In any event, it may be that if one looks at what people actually do, rather than at what they say, one finds a pattern that is more consistent with the continued durability of traditional gender roles. Perhaps, then, the tension is between what people think they ought

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82. Sixty-five percent of American women 16-64 are employed, compared with 54% of German women, and 60% of married American women with preschool children are employed, compared with 46% of comparable German women. Moreover, while only a quarter of employed American women are working part-time, a third of the employed German women are. Drobnic, Blossfeld and Rohwer, *Dynamics of Women's Employment Patterns over the Family Life Course: A Comparison of the United States and Germany*, 61 Journal of Marriage and the Family 133, 134 (1999).

83. I say "appear" because the data collection methods are not entirely comparable. But with that caveat, it seems that the percentage of British women who work part time rather than full time is much higher than in the U.S., despite the apparently greater rejection of the sexual division of labor by British men and women as compared with Americans. See Rachel Rosenfeld and Gunn Elizabeth Birkelund, *Women's Part-Time Work: A Cross National Comparison*, 11 European Sociological Review 111 (1995).

to want, and what they actually want: we *ought* to want gender equality, which perhaps means we *ought* to want to abolish gender roles in marriage. But one may believe that eliminating gender roles in marriage is an important societal aspiration but have preferences in the conduct of one's own marriage that are not entirely in accord. The mother who wants to have time for her children may choose part-time work, if she has a husband who can provide the resources necessary to permit that choice, even if she believes that in principle her choice should be made just as often by men. Americans have in general a more individualistic culture than many others: we are perhaps less inclined than Europeans to think that our own preference *ought* to accord with prevailing ideology, less embarrassed to admit that it does not. So perhaps American women are more comfortable than European women in acknowledging their preference for the primary parenting role, which might also be reflected in a lower level of discontent.

The Swedish experience may offer a lesson in the difficulty of using public policy to alter the distribution of preferences between the genders. The sharing of family responsibilities between mothers and fathers is an explicit goal of Swedish law.[84] Swedish law makes no distinction between maternity and paternity leave: it allows the father and the mother to share the statutory parental leave between them however they want, after the child's birth.[85] The Swedes have apparently achieved much more market equality between the genders than have Americans: the gender wage differential is much less, and workplace child care facilities

84. Bretta Hoem, *The Way of the Gender-Segregated Swedish Labour Market*, in Karen Mason and An-Magritt Jensen, eds., GENDER AND FAMILY CHANGE IN INDUSTRIALIZED COUNTRIES 279 (1995).

85. *Id.*

much more available.[86] But when one looks at the choices actually made by mother and fathers, a familiar pattern emerges--but even more so. The proportion of women who work part time is much greater in Sweden than in America, both absolutely, and relative to the proportion of men who work part-time.[87] While 85 percent of Swedish women between 25 and 64 are in the labor force, about 60 percent of employed women with children between 2 and 6 work only part-time.[88] By comparison, 90 percent of Swedish men are in the labor force, and only about 5 % of those with children between 2 and 6 work part-time.

One survey picked a random week during the year and asked whether parents were absent from work that week to care for their children. Twenty-four percent of Swedish women with children below 7 were absent for the entire week, but only 2 percent of the men. Eighty-six percent of the women with children under a year of age were absent for a week, but only 6 percent of the men.[89] While better educated Swedish women work more hours than the less-well educated, even those with a college education only work about 65% of the hours that men work, during the first ten years of their child's life–assuming that they have only one child. Those with more than one child work less, perhaps half the hours that

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86. This characterization of the Swedish work environment is made by Cherlin, supra, at p. 47. It is confirmed by the data in Gornick and Jacobs, *Gender, The Welfare State, and Public Employment: A Comparative Study of Seven Industrialized Countries*, Luxembourg Income Study Working Paper # 168 (1998) (forthcoming, American Sociological Review). From Tables 1 and 6 in in Gornick and Jacobs one can derive a female/male earnings ratio of .8 in Sweden, as compared to .69 in the U.S., using comparable 1991-92 measures from both countries.

87. Cherlin cited a 1985 source that reported that the female/male ratio of part-timers is almost 6 to 1 in Sweden, much higher than in America, p. 47. See also Table 3 of Rosenfeld and Birkelund, *Woman's Part-Time Work: A Cross National Comparison*, 11 European Sociological Review 111 (1995), which uses 1986 data from the Luxembourg Income Survey to find that about 95% of working men work more than 35 hours a week in both Sweden and the U.S.--but while 82% of American working women also do so, only 53% of Swedish women do.

88. Hoem, *supra,* at 281, 283.

89. *Id.* at 284-285.

men work.[90] A Swedish researcher sympathetic to the announced Swedish policy, but frustrated by its apparent ineffectiveness in altering gender patterns in work and family behavior, concluded that it was inadequate to urge young women to choose "male" subjects in their education. "A second line of attack is to induce men to behave more like women in their career choices."[91] But she had no ready strategy for achieving that goal either. Observing as well that local surveys indicated that most Swedish women are "quite content with their lot", she concluded with some apparent resignation that "[p]erhaps we should avoid equating gender equality with 'sameness' and give more allowance for gender-specific personal fulfillment."[92]

The Swedish marriage rate is also half that of Americans'.[93] The Swedes have a long tradition of nonmarital cohabitation, and it is unlikely that any single demographic difference will account for their much lower marriage rate.[94] But the Swedes' compressed income differentials in general, and the reduced gender wage gap in particular, do mean that Swedish women have more difficulty than American women in locating marital partners with higher earning potential, while the Swedes' social services may make it less important that they do so in order to care comfortably for their children.

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90. Hoem, *supra*, at 286-7.

91. *Id.* at 293.

92. *Id.* at 295.

93. The marriage rates during that same time period was 4.3 marriages per 1000 inhabitants in Sweden, as compared to 9.4 in the U.S. United Nations, Department of Economic and Social Affairs Statistics Division, Monthly Bulletin of Statistics Vol.LII, No. 12, December, 1998.

94. For more on the Swedish cohabitation tradition, see B. Hoem and J.M. Hoem, *The Swedish Family: Aspects of Contemporary Development*, 9 J. Family Issues 397 (1988).

A positive relationship between marriage and male earnings has been found in many different countries,[95] and the research suggests that one probable explanation is that men with good earnings prospects are more likely to marry.[96] Cohabiting couples are more likely to marry the better are the man's financial circumstances; but the women's economic circumstances do not have this effect.[97] Black women are far less likely to marry than white women, and this difference has been linked to the relative shortage of black men with good earnings prospects.[98] So the connection between a man's earning potential and his marriageability is widespread, and seems likely to be the result of female choice.

It would surely be a mistake to think it is inevitable that mothers will want the primary

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95. Schoeni, *Marital Status and Earnings in Developed Countries*, 8 J. Pop. Econ. 351 (1995). This paper looks at 14 developed countries, relying on the Luxembourg Income Study for data. It shows that married men earn more than single men (but not widowed men) nearly everywhere; it does not attempt to determine why.

96. The association between male earnings and marital status could have three different sources: men with good earnings prospects have more success as suitors because their earning potential itself increases their appeal to women; men with good earnings prospects have more success as suitors because there is an overlap in the attributes, which may remain unidentified, that lead to good earnings and those that appeal to women; or, marriage itself enhances men's earnings prospects. Teasing these apart is methodogically difficult, but it seems certain that the first contributes to the association, even if it does not account for all of it. See, e.g., Christopher Cornwell and Peter Rupert, *Unobservable Individual Effects, Marriage and the Earnings of Young Men*, 35 Economic Inquiry 285 (1997) (finds that most of the male earnings premium attributed to marriage "is associated with unobservable individual effects that are correlated with marital status and wages"); Yinon Cohen & Yitchak Haberfeld, *Why Do Married Men Earn More Than Unmarried Men?*, 20 Soc. Sci. Res. 29 (1991) (finds no evidence that marriage generally confers a career advantage on men).

97. Pamela Smock and Wendy Manning, *Cohabiting Partners' Economic Circumstances and Marriage*, 34 Demography 331 (1997).

98. E.g., in 1993 43% of black women aged 30 to 34 had never married, as compared with only 15.5% of white women in that age range. Arlene Saluter, Marital Status and Living Arrangements, March 1993, U.S. Bureau of the Census, Current Population Reports, Series P20-478 (1994). In 1998, 5 million of the 11 million black women 15 and older (45%) had never married, while 25 million of the 85 million white women of that age (29%) had never married. Table MS-1, *Marital Status of the Population 15 Years Old and Over, by Sex and Race: 1950 to Present*, Census Bureau, January 7, 1999, http://www.census.gov/population/socdemo/ms-la/tabms-1.txt. For some of the work on the connection between the low black marriage rates and the economic circustances of black men, see the literature review in Michael J. Brien, *Racial Differences in Marriage and the Role of Marriage Markets*, 32 J.Human Resources 741 (1998).

responsibility to care for their children, and thus also fathers who are "good providers" and thus make that choice more comfortable. The existence of counter-examples–of couples whose successful marriages defy or reverse this traditional pattern--makes it clear that other choices are indeed possible. But the traditional arrangements appear to be remarkably durable, across times and cultures. Humans are enormously adaptable, but our preferences may be less malleable than our tactics. Sarah Blaffer Hrdy, the feminist anthropologist and evolutionary theorist, has done much to enrich those fields' traditional accounts of gender relations, and has in particular emphasized the extent to which women have always relied upon others–"alloparents"–for child care (including wet nursing), freeing mothers to engage in other activities. Mothers need be "freed" only because, compared to the young of others species, "human infants are so vulnerable and dependent for so long a time, that the level of commitment to them by the close relative on the spot at birth, primed to care, and lactating, is the single most important component of infant well-being".[99]

Hrdy notes that during the prehistoric eras in which our current genes were formed, it is unlikely an infant could have been weaned before the age of two without "severely jeopardizing his or her chances", and that mothers who weaned before their child turned four "were still gambling".[100] So women without a strong inclination to nurture their infant left far fewer descendants than those with it. Hrdy believes, though, that while natural selection favored nurturing mothers, its more important impact may have been on the infants themselves, because those most able to elicit their mother's propensity to nurture

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99. Sarah Blaffer Hrdy, MOTHER NATURE 378 (1999).

100. *Id. at 409.*

survived most reliably–and were thus more likely to leave descendants:

> Maternal propensities interact with infant needs in ways that make certain preferences highly probable: the infant takes it from there. The mother's sex may not be her destiny. But from the perspective of a newborn...there are attributes to a mother that make her an easily acquired taste. For reasons that have less to do with innate properties of mothers than they do with how effective infants are in achieving their first choice, babies in the majority of primates are found in the exclusive possession of their mothers, and vice versa. Once initiated, infants develop a passionate preference for this arrangement.[101]

Of course, we are in a modern world now. Newborn survival no longer depends on having a nurturing, lactating woman close by, even if our genes don't yet know that. And adaptable, analytic humans can *choose* to act differently. But will we? We can also choose to avoid sugar, or to remain celibate, and some of us do. But most of us do not. It is always easier to follow inclinations than to combat them. Moreover, small inate differences in the average inclinations of men and women can easily interact with the environment in ways that generate much larger differences between the genders.[102] Culture is probably more likely to build upon and magnify gender differences, than to resist them.

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101. *Id.* at 501.

102. Hrdy describes the modern young couple who start out with the intention of caring equally for their newborn, but are soon affected by both the baby's preference for the mother, and by the mother's inclination to respond more rapidly to infant cries of discomfort or need than do fathers, a difference Hrdy thinks is probably inate. (There is no difference in the response of mothers and fathers when the baby gives cries of real distress). See Hrdy's discussion in MOTHER NATURE, *supra*, at 211-213.

CONCLUSION

Whereas preventing divorce has been a focus of much attention in the past, encouraging marriage may become the new social concern. Should we care whether people marry? Perhaps we should. Unmarried cohabitants are less likely than married couples to pool their financial resources, to have a sense of responsibility for one another, to have the confidence in their relationship that allows them to specialize within it. It even appears that they have less satisfying sex lives.[103] While much attention is paid the children of divorce, the children of the unmarried today account, in America, for nearly as many of those living in single-parent households,[104] and surely they fare no better.

At the same time, the law may have no more prospect of playing a useful role in encouraging marriage than it historically had in preventing divorce. Surely no one would suggest that efforts to ensure gender equality in the workplace should be abandoned because they may reduce marriage rates, just as no one would suggest that a just treatment of the financially dependent spouse at the termination of a marriage should be abandoned because it may encourage such spouses to seek divorce. More importantly, the factors that influence social phenomena like divorce and marriage are usually far too complex to predict. The spouses' relative earnings are only one factor that affects the inclination to marry, and it hardly seems likely that shifts in it alone will cause declines in the marriage rate without

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103. For supporting authorities for all these propositions, see Linda Waite, *Does Marriage Matter?*, 32 Demography 483 (1995).

104. In 1994, 37 percent of children in single parent households were living with a divorced parent, but 36 percent were living with a never-married parent. The remainder were living with a separated parent. This is a significant change since 1983, when the proportion living with a divorced parent was nearly double (42%) those living with a never-married parent (24%). Bureau of the Census, *Marital Status and Living Arrangements: March 1994*, Current Population Reports Series P20-484 (1996), at Table E.

limit. It is far more likely that the decline in the marriage rate, like the earlier rise in the divorce rate, will level out and perhaps even reverse, as social mores and cultural factors accommodate to women's increased workplace role.

Perhaps the most relevant message that the analysis of this paper offers to the law is that the persistence of gender roles in marriage makes it likely that many traditional divorce law doctrines will not only retain their importance in the 21st century, but will continue to have a gender-specific impact, even though not gender-specific in form. The inclination of most married mothers to make life choices that compromise their career potential, so as to serve their children, is not likely to disappear, and so neither are we soon likely to find ourselves in a world in which financial remedies at divorce have become unimportant. The enthusiasm exhibited by some courts in the 1970's for a new world in which spouses are economic equals, rendering post-divorce financial remedies obsolete, is now universally regarded as premature.[105] It may turn out, however, to have been premature by a much larger margin than many might have hoped. Finally, the declining marriage rates may suggest that the law's treatment of nonmarital families will be increasingly important. The twentieth century saw a shift in the treatment of nonmarital children, who are now treated no differently than marital children in their claim for support from their parents. The persistence of gender roles may suggest that long-term relationships between parties who have never formally married should also be treated similarly to marriage, because the parties' behavior may be little

105. Compare, e.g., Neal v. Neal, 570 P.2d 758 (Ariz. 1977) (no reason for divorce court to retain jurisdiction to provide for alimony in an era of "feminine equality") with Mori v. Mori, 603 P.2d 85 (Ariz. 1979) (court ordered to retain jurisdiction so it may extend alimony indefinitely, at termination of 23 year marriage with grown children).

affected by the formalities with which they commenced their relationship.[106] Certainly the gender patterns prevalent in long-term relationships between men and women long preceded the modern state and its legal apparatus for formalizing their union. One should not be surprised if it also survives the inclination of men and women to follow those formalities.

106. See Chapter 6, Domestic Partners, in American Law Insitute, Principles of the Law of Family Dissolution (Tentative Draft No. 4, 2000), which provides for divorce remedies at the dissolution of most cohabiting relationships with children.